Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

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October Term, 1996

LINDA FUTTERMAN,

Petitioner,

vs.

ANDREA T. NASSET, *et al.*, MARGARETTEN & COMPANY, INC. AND CHEMICAL MORTGAGE COMPANY,

Respondents.

Petition for a Writ of Certiorari to the Minnesota Court of Appeals

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PETITION FOR A WRIT OF CERTIORARI

STANLEY FUTTERMAN
Counsel of Record
Attorney for Petitioner
655 Third Avenue
Ninth Floor
New York, New York 10017
(212) 687-3121

(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21
Lutz Appellate Services, Inc.

34 pp

QUESTION PRESENTED

Is it consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution for a member of the class who objects to the settlement to be foreclosed from obtaining an appeal of a class action judgment approving settlement of the class action suit when attorneys for plaintiffs gave (1) no notice of how an appeal was to be taken and (2) affirmatively misled such member as to the final order from which such an appeal would lie?

LIST OF PARTIES

1. Andrea T. Nasset, Peter J. Nasset, Molly K. Olson, Randall C. Johnson, Kenneth and Nancy French, are the named plaintiffs in the class action suit filed in the Minnesota District Court, Hennepin County, Fourth Judicial District (Case No. 94-9240).

2. Linda Futterman is a member of the above class who objected to the settlement entered in the class action suit and the petitioner-appellant on this petition.

3. Margaretten & Company, Inc. and Chemical Mortgage Company are the defendants-respondents in the class action suit.

TABLE OF CONTENTS

Page

Question Presented i

List of Parties ii

Table of Contents iii

Table of Citations iv

Opinions Below 1

Statement of Jurisdiction 1

Constitutional Provision Involved 1

Statement of the Case 2

A. Preliminary Statement 2

B. The Facts 2

Reasons for Granting the Writ 9

Due Process Requires That Members Of A Class Action Suit Be Notified Of The Terms Of A Proposed Settlement And The Options That Are Open To The Members In Connection With That Proceeding, Including How To Effectively Appeal Such Settlement If Approved Over Objection. 9

Conclusion 12

Page

TABLE OF CITATIONS

Cases Cited:

Austin v. Pennsylvania Dept. of Corrections, 876 F. Supp. 1437 (E.D. Pa. 1995) 11

Farrar v. Hobby, 114 S. Ct. 566, 506 U.S. 103, 121 L. Ed. 494 (1992) 12

In re Corrugated Container Antitrust Litigation, 643 F.2d 195 (5th Cir. 1981) 9

In re Drexel Burnham Lambert Group Inc., 130 B.R. 910 (S.D.N.Y.), *aff'd*, 960 F.2d 285 (2d Cir. 1992) 9

In re Fine Paper Antitrust Litigation, 98 F.R.D. 48 (E.D. Pa. 1983), *aff'd in part, rev'd on other grounds*, 751 F.2d 562 (3d Cir. 1984) 11

Krug v. Independent School District No. 16, 293 N.W. 2d 26 (Minn. 1980) 8

Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950) 2, 9

State v. M.A.P., 281 N.W. 2d 334 (Minn. 1979) 8

Contents

Page

Statute Cited:

28 U.S.C. § 1257(a) 1

United States Constitution Cited:

Fourteenth Amendment .... i, 1, 7

Rules Cited:

Federal Rule of Appellate Procedure 4(a)(1) 5, 10

Federal Rule of Civil Procedure 23(e) 9

Minnesota Rule of Civil Procedure 23 9

New York Civil Practice Law and Rules, Section 5515 5

Supreme Court Rule 10 1

APPENDIX

Appendix A — Order in the Supreme Court of the State of Minnesota Filed November 20, 1996 .... 1a

Appendix B — Order of the Court of Appeals, State of Minnesota Filed September 24, 1996 .... 2a

Contents

Page

Appendix C — Judgment in the Minnesota District Court, Hennepin County, Fourth Judicial District Dated February 27, 1996 .... 4a

Appendix D — Amended Findings and Order of the Minnesota District Court, Hennepin County, Fourth Judicial District Dated February 7, 1996 .... 10a

OPINIONS BELOW

1. The Supreme Court of the State of Minnesota (Appeal No. C8-96-1847) by Order dated and filed November 20, 1996 denied petitoner's petition for review. (App. 1a.)

2. The Minnesota Court of Appeals by Order dated and filed September 24, 1996 denied petitioner's motion to extend the time for filing her appeal and dismissed the appeal. (App. 2a-3a.)

3. The Amended Findings and Order of the Minnesota District Court, Hennepin County, Fourth Judicial District dated February 7, 1996 and the Judgment entered pursuant thereto on February 27, 1996 approved a class action settlement to which petitioner filed objections and sought an appeal. (App. 4a-15a .)

STATEMENT OF JURISDICTION

The Supreme Court of the State of Minnesota denied petitioner's petition for review by Order entered November 20, 1996. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a) to review that final decision. This Petition for Writ of Certiorari is sought on grounds that a "state court . . . has decided an important question of federal law which has not been, but should be, settled by this Court." Rule 10 of the Supreme Court Rules.

CONSTITUTIONAL PROVISION INVOLVED

1. The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

A. Preliminary Statement

Petitioner Futterman respectfully petitions this Court for a Writ of Certiorari to the Minnesota Court of Appeals. This case concerns an appeal from a judgment approving a settlement in a class action suit filed in the Minnesota Hennepin County District Court (Case No. 94-9240) by the Minneapolis firm of Zimmerman Reed over alleged mortgage escrow practices of respondents Margaretten & Company, Inc. and Chemical Mortgage Company. Petitioner, a New York resident, who upon notice of the settlement filed written objections, unsuccessfully sought to appeal that judgment. Petitioner's appeal was dismissed as untimely by the Minnesota Court of Appeals and petition for review was denied by the Minnesota Supreme Court.

In urging the Minnesota Supreme Court to review the case, petitioner posed the question: "Would the refusal to accept this appeal violate petitioner's rights under the Due Process Clause of the Fourteenth Amendment of the United State Constitution?" Specifically, petitioner argued that "class action plaintiffs' due process guarantees of proper notice must include a right of notification regarding rights to appeal and the court documents parties are required to submit to perfect appeal." Not having been afforded such notice, petitioner argued that her due process rights under *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950) had been violated. The Minnesota Supreme Court denied review without addressing petitioner's due process claim.

B. The Facts

On or about November 10, 1995 petitioner received notice in the mail of a proposed settlement of a class action suit in the

Minnesota District Court, Hennepin County. Petitioner, a resident of New York with no contacts with Minnesota, was included as a member of the class by the Minnesota firm of Zimmerman Reed because she had a mortgage with Chemical Mortgage Company, a New York bank and a defendant in the suit. The underlying suit sought a refund of several million dollars held by defendants in escrow accounts resulting from accounting reforms ordered by the U.S. Department of Housing and Urban Development. The undated notice (hereinafter "the Notice") informed petitioner of a proposed hearing to be held on January 12, 1996 and instructed petitioner that if she wished to appear at the hearing and to object she had to file a written notice of intent to appear with the clerk of the court, and that should she wish to file a written objection to the court she should do so before December 6, 1995 with service of additional copies of the objection to counsel for plaintiffs and the class. The name of Zimmerman Reed, their address and telephone number was provided. The Notice contained the following caution:

> You should not address any questions about the Settlement Agreement, the proposed settlement or the lawsuit to the Clerk of the Court, the Judge, Chemical or Chemical's counsel.

Petitioner was thus to rely on plaintiffs' counsel, Zimmerman Reed, for all information concerning the case.

On December 5, 1995 petitioner through her husband, a New York attorney, Stanley Futterman, Esq., duly submitted written objections to the proposed settlement to the clerk of the court, along with a request for admission of Futterman to practice before the court *pro hac vice*[1], and served Zimmerman Reed with a copy of the objection. Petitioner objected to the proposed settlement on grounds that (1) the Notice in itself contained insufficient disclosures and established unreasonable barriers to the presentation of objections and (2) the proposed settlement provided inadequate and deficient remedies to the members of the class and apparently exorbitant rewards to the attorneys for the class, to the detriment of the class. More specifically, petitioner objected to the inadequate rebate pool of $50,000 with no individual rebate to exceed $25, the sham value of providing $125 future credit on new first mortgages taken out, the unreasonable and unjustified attorney's fee award of $250,000 to Zimmerman Reed, and the procedural obstacles to presenting objections to the settlement.

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[1] The application for admission *pro hac vice* was never acted upon.

Nothing further was heard of the case by petitioner. Only upon inquiry to the clerk of the court by petitioner's counsel on or about February 8, 1996 as to the status of the case did Zimmerman Reed fax to Mr. Futterman a copy of the District Court's Amended Findings and Order approving the settlement dated February 7, 1996. The Order provided: "THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY." (App. 15a.) Petitioner's counsel assumed that such a direction, consistent with the practice with which he was familiar, would cause the clerk to endorse the Order and file it as a judgment, without further addition or delay. Thereafter, on March 6, 1996, petitioner filed with the District Court a Notice of Appeal from "the Order and Judgment entered in this action on the 7th day of February, 1996". A copy of the Notice of Appeal was also served on Zimmerman Reed. Unknown to petitioner at the time was the fact that a separate judgment in the case dated February 27, 1996 had been entered by the Deputy District Court Administrator. Notwithstanding Zimmerman Reed's knowledge of petitioner's attempt to appeal, Zimmerman Reed did not provide petitioner with a copy of the separate judgment nor did Zimmerman Reed notify petitioner that under Minnesota practice the appeal is to be taken from the separate judgment and the Notice of Appeal is to be filed with the clerk of the courts of appeal.[2]

On March 25, 1996, petitioner received a note from the District Court Administrator, returning the Notice of Appeal and explaining:

> Before we can file your Notice of Appeal, we will have to have your cost bond or $500.00 check in lieu of cost bond or waiver of cost bond, per Rule 107. Your request for admission pro hac vice has been passed on to Judge Justman. As for your notice of appeal to the Court of Appeals, we will first need your cost bond for $500.00 before we can acknowledge it.

That same date, petitioner's counsel resubmitted the Notice of Appeal to the District Court requesting that it be filed *nunc pro tunc*, and requested that the cost bond of $500 be waived in light of the low settlement value to each class member ($25 in cost and $125 future credit). A copy of that request was mailed to Zimmerman Reed. By order dated April 2, 1996 Judge Justman granted the waiver of the cost bond requirement. Petitioner assumed that an appeal had been effectively taken and what remained was only its perfection.

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[2] Petitioner's counsel filed in accordance with the procedures used in the New York state courts and the federal courts.

The New York Civil Practice Law and Rules, Section 5515, provides, in relevant part, that: "[a]n appeal shall be taken by . . . filing it in the office where the judgment or order of the court of original instance is entered . . . ."

The Federal Rules of Appellate Procedure, Rule 4(a)(1) provides, in relevant part, that: "[i]n a civil case the notice of appeal . . . shall be filed with the clerk of the district court. . . . If the notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted."

In seeking to assemble the proper record for appeal, petitioner's counsel contacted Zimmerman Reed. His telephone calls went unanswered. On June 3, 1996 petitioner's counsel received a letter dated May 28, 1996 from Zimmerman Reed enclosing yet *another* copy of the District Court's February 7, 1996 Amended Findings and Order, but *no* copy of the Judgment entered February 27, 1996.

On July 22, 1996 petitioner's counsel filed with the clerk of the appellate courts the Notice of Appeal, a copy of the February 7th order and two copies of the statement of the case, and a check for $15 in filing fees. These submissions were rejected by the clerk and in a letter dated August 1, 1996 informed petitioner's counsel, among other things, that (1) the February 7th Order was not appealable[3] since it was not a judgment and an appeal from the February 7th decision, even assuming it was a judgment, was untimely, and (2) proof of service of a timely filing of the notice of appeal had not been provided.

On August 12, 1996, only by contacting Judge Justman in the District Court directly did petitioner receive for the first time a copy of the Judgment entered February 27, 1996. On August

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[3] The letter also noted that other parties in the case also attempted to appeal from the same order and when questioned as to its appealability voluntarily dismissed their appeal. Those parties apparently were not provided with a copy of the judgment as well. Frustrated, they abandoned their appeal. Other members of the class who were dissatisfied and wished to appeal were also misled.

13, 1996, petitioner resubmitted an Amended Notice of Appeal to reflect that the appeal was to be taken from the Amended Findings and Order dated February 7th and the Judgment entered pursuant thereto on February 27, 1996, along with a motion requesting that petitioner-appellant's appeal papers be accepted. By letter dated August 21, 1996, the clerk of the appellate courts refused to accept the papers. Petitioner moved to accept the late filing of the notice of appeal, now with the aid of Minnesota counsel, Elliot C. Rothenberg, Esq. By Order dated September 24, 1996 the Court of Appeals denied petitioner-appellant's motion and dismissed the appeal as untimely on grounds that petitioner's time to appeal expired on May 28, 1996, 90 days after judgment was entered, that petitioner did not file a notice of appeal with the Court of Appeals until July 22, 1996, that the timely service and filing of the notice of appeal is jurisdictional and cannot be extended. (App. 2a-3a.)

Thereafter, petitioner sought review of the Court of Appeals decision by the Minnesota Supreme Court. Petitioner's Petition for Review posed the question: "Would the refusal to accept this appeal violate petitioner's rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution?". Specifically, petitioner argued:

> Class action plaintiffs have a Fourteenth Amendment due process right to "notice . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice should describe the action and the plaintiffs' rights in it." Moreover, the Due Process Clause requires that class action attorneys adequately represent the interests of the absent class members. *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 811-12 (1985); *Mullane v.*

> *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950).
>
> Class action plaintiffs' due process guarantees of proper notice must include a right to notification regarding rights to appeal and the court documents parties are required to submit to perfect appeals. The plaintiffs have a right not to be misled by those vested by the court with fiduciary responsibility. Because the class action attorneys did not provide petitioner with the required notice, and instead proffered deceptive responses or non-responses to her communications, the Fourteenth Amendment mandates acceptance of this appeal.

Petitioner further argued that in the interest of justice the Minnesota Supreme Court could exercise its discretion to hear appeals not filed in a timely manner, citing *Krug v. Independent School District No. 16,* 293 N.W. 2d 26, 29 (Minn. 1980); *State v. M.A.P.,* 281 N.W. 2d 334, 336-37 (Minn. 1979).

The Minnesota Supreme Court by Order dated November 20, 1996, without opinion, denied the petition for review, and did not address petitioner's due process claim. (App. 1a.)

REASONS FOR GRANTING THE WRIT

DUE PROCESS REQUIRES THAT MEMBERS OF A CLASS ACTION SUIT BE NOTIFIED OF THE TERMS OF A PROPOSED SETTLEMENT AND THE OPTIONS THAT ARE OPEN TO THE MEMBERS IN CONNECTION WITH THAT PROCEEDING, INCLUDING HOW TO EFFECTIVELY APPEAL SUCH SETTLEMENT IF APPROVED OVER OBJECTION.

When the named parties to a class action reach a proposed settlement, notice must be given to the members of the class. This notice requirement, embodied in Rule 23 of Minnesota Rules of Civil Procedure, is similar to Rule 23(e) of the Federal Rules of Civil Procedure. These notice requirements are designed to protect absent class members' due process rights. *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865 (1950). That notice must contain enough information to enable class members to make an informed choice as to their options in the proceeding: whether to remain a member of the class, how to opt out, how to object to the proposed settlement, including how to appeal the settlement if approved over the objection of any class member. *See In re Drexel Burnham Lambert Group Inc.,* 130 B.R. 910, 924 (S.D.N.Y.), *aff'd,* 960 F.2d 285 (2d Cir. 1992); *In re Corrugated Container Antitrust Litigation,* 643 F.2d 195, 223 (5th Cir. 1981).

Notice of a proposed settlement, which does not provide class members with information on how to appeal from an order approving an objectionable settlement, denies the right of appeal because the amount at stake for each individual class member will invariably not justify retention of local counsel.

Attorneys Zimmerman Reed for the plaintiff class, knowing full well that petitioner not only objected to the proposed settlement, but that petitioner also sought to appeal the approved settlement, never provided petitioner with a copy of the Judgment dated February 27, 1996 — the only appealable order in the case. Zimmerman Reed *twice* sent petitioner a copy of the wrong order — the February 7, 1996 Order which was non-appealable.

The Notice sent petitioner specifically cautioned petitioner not to contact the clerk of the court, the judge, defendant or defendant's counsel for any information concerning the case, except Zimmerman Reed. Thus, petitioner relied on Zimmerman Reed to send her the right documents if she wished to appeal and relied on Zimmerman Reed to notify her of the requirements for filing an appeal, including that a notice of appeal to the Court of Appeals must be filed with the clerk of the appellate courts with a copy to the District Court. Neither Zimmerman Reed nor the clerk of the district court notified petitioner that petitioner's Notice of Appeal filed with the District Court was insufficient to lodge an appeal. The clerk of the district court did not transmit a copy of the Notice of Appeal to the clerk of the appellate courts, which is what would have been done if a notice had been mistakenly filed with the wrong court in the federal system. Fed. R. App. P. 4(a)(1). Acceptance of petitioner's resubmission of the Notice of Appeal along with a request for waiver of the $500 cost bond and the judge's subsequent order approving the waiver led petitioner to believe that her appeal had been correctly lodged.

Petitioner sought to file her appeal as early as March 6, 1996 — the date of the first Notice of Appeal. Had the Court of Appeals accepted her appeal papers and deemed the Amended Notice of Appeal filed March 6, 1996 *nunc pro tunc* — the first date petitioner attempted to file her appeal, the appeal would have well been timely. The time for filing expired on May 28, 1996 — 90 days after the judgment of February 27, 1996. Without ever even being provided with a copy of the judgment (until petitioner contacted Judge Justman directly and a copy was received for the first time on August 12, 1996), petitioner could not even have calculated when the 90 days commenced. Thus, despite petitioner's diligent efforts to file and perfect her appeal, Zimmerman Reed's deception and silence, which has now been accepted and effectively endorsed by the Minnesota courts, deprived petitioner of her right to an appeal. If petitioner is denied an appeal, a settlement that does little for plaintiffs' class and unjustly rewards their attorneys at plaintiffs' expense will forever go unreviewed, and plaintiffs' class counsel in similar cases will be encouraged to employ similarly sharp practices to fend off review of class action settlements that do nothing for the class but everything for class counsel.

This case well illustrates how class actions carry the potential of becoming vehicles for settlements enriching the attorneys purportedly representing the plaintiff class at the expense of the plaintiffs themselves. The interests of the attorneys become adversarial to clients who wish to exercise their rights to appeal from orders approving such settlements. Once Zimmerman Reed obtained a judgment approving an attorney's fee award of a quarter of one million dollars, they had no interest and were positively adverse to any appeal which would disturb that lucrative award. Due process, however, requires that notice be given precisely to "guard against class representatives settling claims at more favorable terms for themselves to the detriment of absent class members." ***Austin v. Pennsylvania Dept. of Corrections,*** 876 F. Supp. 1437 (E.D. Pa. 1995); ***see also In re Fine Paper Antitrust Litigation,*** 98 F.R.D. 48, 84-85 (E.D. Pa. 1983) ("[A] class action is something more than a fee-generating device. It is a cause of action belonging to members of a class to whom counsel owe a duty of fidelity. Their primary job is to create a fund for the class not the lawyers."), ***aff'd in part, rev'd on other grounds,*** 751 F.2d 562 (3d Cir. 1984). Where plaintiffs are only awarded nominal damages as here — $25 cash and a "credit" of $125 on closing costs — attorneys for plaintiffs should not be allowed a windfall. *See Farrar v. Hobby,* 114 S. Ct. 566, 506 U.S. 103, 121 L. Ed. 494 (1992).

So as to guard against attorneys selling out to the plaintiffs' class, class action plaintiffs' due process guarantees of proper notice must include a right to notification regarding rights to appeal and the court documents parties are required to submit to perfect appeals. Plaintiffs have a right not to be misled by those vested with a fiduciary responsibility. Because the class action attorneys in this case did not provide petitioner with the required notice, and instead proffered deceptive responses or non-responses to her communications, petitioner's due process rights were violated.

This question as to whether the due process guarantees of proper notice required in class action suits extends to a right to notification regarding rights to appeal and the court documents parties are required to submit to perfect appeals is an important question of federal law and has not been settled. It should be by this Court.

CONCLUSION

For the reasons stated above, petitioner's petition for a writ of certiorari should be granted.

Dated: February 18, 1997

Respectfully submitted,

STANLEY FUTTERMAN
Counsel of Record
Attorney for Petitioner
655 Third Avenue, 9th Floor
New York, New York 10017
(212) 687-3121

APPENDIX A — ORDER IN THE SUPREME COURT OF THE STATE OF MINNESOTA FILED NOVEMBER 20, 1996

STATE OF MINNESOTA
IN SUPREME COURT

C8-96-1847

Andrea T. Nasset, et al.,

Respondents,

vs.

Linda Futterman,

Appellant,

Margaretten & Company, Inc., et al.

Respondents.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Linda Futterman for further review be, and the same is, denied.

Dated: November 20, 1996

BY THE COURT:

s/ illegible
Chief Justice

APPENDIX B — ORDER OF THE COURT OF APPEALS, STATE OF MINNESOTA FILED SEPTEMBER 24, 1996

STATE OF MINNESOTA
IN COURT OF APPEALS

#C8-96-1847

Andrea T. Nasset, et al.,

Respondents,

Linda Futterman,

Appellant,

vs.

Margaretten & Company, Inc., et al.,

Respondents.

ORDER

Considered and decided by Schumacher, Presiding Judge, Parker, Judge, and Short, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS HEREIN, AND FOR THE FOLLOWING REASONS:

Appellant seeks review of a judgment entered February 27, 1996. The time to appeal the judgment expired May 28, 1996, 90 days after judgment was entered. *See* Minn. R. Civ.

Appendix B

App. P. 104.01. Appellant moves for acceptance of appeal papers mailed to this court on July 22, 1996.

This court cannot extend the time to file an appeal. Minn. R. Civ. App. P. 126.02; *Township of Honner v. Redwood County,* 518 N.W.2d 639 (Minn. App. 1994), *review denied* (Minn. Sept. 16, 1994). Timely service and filing of the notice of appeal are jurisdictional. Minn. R. Civ. App. P. 103.01, subd. 1. It is undisputed that appellant did not mail any notice of appeal to this court within 90 days after entry of the judgment. Appellant has cited no authority permitting acceptance of the appeal.

IT IS HEREBY ORDERED:

1. Appellant's motion is denied and this appeal is dismissed.

2. The motion for admission pro hac vice of New York counsel is denied as moot.

Dated: September 24, 1996

BY THE COURT

s/ Robert H. Schumacher
Robert H. Schumacher
Presiding Judge

CLL:mbs

APPENDIX C — JUDGMENT IN THE MINNESOTA DISTRICT COURT, HENNEPIN COUNTY, FOURTH JUDICIAL DISTRICT, DATED FEBRUARY 27, 1996

STATE OF MINNESOTA DISTRICT COURT, HENNEPIN COUNTY, FOURTH JUDICIAL DISTRICT

File No. 94-9240

DATE: Feb. 27, 1996

ANDREA T. AND PETER J. NASSET; MOLLY K. OLSON; RANDALL C. JOHNSON; KENNETH AND NANCY FRENCH, AND ALL OTHERS SIMILARLY SITUTATED,

Plaintiffs,

-vs-

MARGARETTEN & COMPANY, INC., CHEMICAL MORTGAGE COMPANY

Defendants

JUDGMENT ROLL

This cause having been regularly placed upon the calendar of the above named Court, came on for hearing on *12th* day of *January,* 1996, upon motion of *Plaintiffs,* and the Court, after hearing the arguments of counsel and being advised in the premises, did, on the *12th* day of *January, 1996,* duly make and file its order granting said motion and for judgment herein, and thereafter, on the 7th day of February, 1996, the court did make and file its amended order for judgment herein.

Now, pursuant to said amended order and on motion of *Charles S. Zimmerman, Esq.*, Attorney for the *Plaintiffs*,

IT IS HEREBY ADJUDGED:

1. That the action against Chemical was commenced on or about June 21, 1991. The action against Margaretten was commenced on June 15, 1994. An Amended Complaint is being filed in this action naming Chemical as an additional Defendant following the acquisition of Margaretten by Chemical.

2. That this action may, for settlement purposes, be maintained as a class action with the class consisting of two subclasses: (a) all persons with escrowed mortgage loans being serviced or subserviced by Defendant as of January, 1, 1995, and (b) all persons who formerly had escrowed mortgage loans that were serviced or subserviced by defendant or its predecessors for a period of at least twelve (12) consecutive months between January 1, 1981 and December 31, 1994 (the "paid off loan class period"), which loans were paid off, transferred or otherwise removed from Defendant's books and records, or whose escrow accounts were waived by Defendant during the paid off loan class period. For those persons who formerly had escrowed mortgage loans secured by real property located in the State of Ohio, the paid off loan class period is January 1, 1976 to December 31, 1994. Included in the existing mortgagor subclass are those loans as of January 1, 1995, by Bank of America for Margaretten & Company, Inc.

3. That the Plaintiffs as class representatives, fairly and adequately represent the interests of the class, and have no interests antagonistic of the Class.

4. That the notice previously given to class members in this action satisfies the requirements of due process and the requirements of Rule 23 Minnesota Rules of Civil Procedure. Notice of the pendency of the action and of the proposed settlement was mailed and published.

5. That the Settlement Agreement is fair, reasonable and adequate as to each member of the class.

The settlement provides for substantial changes in the method of accounting mortgage escrow impound accounts to be utilized by the Defendant, and substantially reduces the amount of money required to be maintained in mortgage escrow accounts for a substantial proportion of the Class. In similar cases, involving approximately the same number of loans and exactly the same changes in methodology, these changes have resulted in refunds to the Class of $10 Million to $14 Million. In addition to this Refund, the Class will receive $50,000 representing an imputed interest penalty for use of funds allegedly improperly maintained in escrow impound accounts by Defendant. The Court considers these changes in methodology, refunds, and cash payments to the Class to represent fair, reasonable and adequate compensation to the Class in highly disputed litigation.

6. That the positions asserted by the Defendant have received some support from HUD, and from other Courts that have considered the merits of Plaintiffs' claims. It is anything but certain that Plaintiff would prevail on their substantive claims, or even achieve as good a result as the outcome provided for in the settlement, if the case were litigated to a conclusion.

7. That each member of the class is bound by the terms of the Settlement Agreement, including those regarding the ongoing services of their mortgage escrow accounts, and the release and covenant not to sue provided for in the Settlement Agreement between the parties. The Mortgage contract of each member of the class is amended, as provided for in the Settlement Agreement, to expressly include the provisions for ongoing servicing of the mortgage escrow impound account in the manner provided for in the Settlement Agreement.

8. That the comments of those objecting to the settlement have been considered and are found to be lacking merit and do not justify denying approval of this settlement.

9. That as soon as practicable and commercially reasonable, but in all events within one (1) year of the date when the Order filed on the 7th day of February, 1996, becomes final as set forth in the Settlement Agreement, Defendant shall institute, or to the extent it has already been instituted, continue to use, the methodology for servicing the escrow accounts of the class members set forth in the Settlement Agreement.

10. That Chemical will facilitate redemption and processing of the credits as set forth in paragraph 10 of the Settlement Agreement, as soon as practicable after the Effective Date of the Settlement Agreement.

11. That within ten (10) days of the date the Order filed on the 7th day of February, 1996, becomes final as set forth in Paragraph 20 of the Settlement Agreement, Defendant shall pay to Zimmerman Reed as and for

attorneys' fees, costs and expenses not to exceed $250,000 from Defendant. All remaining sums to be paid under the terms of the Settlement Agreement shall then be credited or paid to members of the Class, as provided for in the Settlement Agreement and in paragraph 17 herein.

12. That all claims in the litigation against Defendant are dismissed on the merits and with prejudice. Each member of the class is permanently enjoined from bringing, joining or continuing to prosecute against Defendant or any released person or entity as set forth in the Settlement Agreement any claim that was, could have been or may be brought in this action or otherwise for which a release and covenant not to sue is given in the Settlement Agreement. Any party violating the Court's injunction shall be required to pay the costs and attorneys' fees incurred by any released party as a result of a violation of the Court's injunction.

13. That the court hereby retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement between the parties.

14. That unclaimed funds from the settlement fund will be paid over to the Habitat for Humanity.

15. That no later than April 1, 1997 and on or before April 1st of each of the following four years through the year 2001, Defendant shall file with the Court, and serve on Plaintiffs' counsel, the following information:

a. the total dollar amount of funds refunded to mortgagors for escrow accounts maintained in the previous calendar year; and

b. the total number of discount certificates redeemed pursuant to Paragraph 10 of the Settlement Agreement during the previous calendar year.

16. That within 120 days after the Effective Date of the Settlement Agreement, or as soon thereafter as practicable, Defendant will file with the Court, and serve upon Plaintiffs' counsel, a list of all checks that have been sent to Former Class members and a confirmation that any remaining funds in the rebate pool have been distributed to the charity specified in Paragraph 11 of the Settlement Agreement. Any filings may, at Defendant's option, be done in magnetic tape or other electronic or computer medium or format.

17. That the Findings and Dismissal Order and the Court's Order Awarding Class Counsel Fees and Costs shall be deemed final, in accordance with paragraph 20(a) of the Settlement Agreement, ninety-five (95) days, rather than sixty-five (65) days, after the entry of judgment thereon to reflect the intent of the parties that sufficient time elapse for the filing of any appeals from the Court's orders and/or judgment, including a reasonable time for filing by mail, before the Settlement Agreement shall be deemed "Effective", as provided in paragraph 23 thereof. The remaining provisions of said paragraph 20 of the Settlement Agreement shall remain in full force and effect.

18. That there being no just reason for delay, judgment be, and hereby is, entered immediately.

BY THE COURT
DISTRICT COURT ADMINISTRATOR

s/ illegible
Deputy

APPENDIX D — AMENDED FINDINGS AND ORDER OF THE MINNESOTA DISTRICT COURT, HENNEPIN COUNTY, FOURTH JUDICIAL DISTRICT DATED FEBRUARY 7, 1996

STATE OF MINNESOTA
DISTRICT COURT HENNEPIN COUNTY
FOURTH JUDICIAL DISTRICT

Case No. 94-9240

Andrea T. and Peter J. Nasset; Molly K. Olson; Randall C. Johnson; Kenneth and Nancy French, and all other similarly situated,

Plaintiffs,

v.

Margaretten & Company, Inc., Chemical Mortgage Company,

Defendants.

AMENDED FINDINGS AND ORDER

This matter came on for hearing before the undersigned on Friday, January 12, 1996 on the motion of Plaintiff for final approval of the class action settlement entered into between the parties to the action. Defendant appeared in support of said motion.

The Plaintiff class was represented by Charles S. Zimmerman and Barry G. Reed of the law firm Zimmerman Reed, 5200 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402. Defendants were represented by Robert J. Pratte and Alan H. Maclin, Briggs and Morgan, 2400 IDS Center, Minneapolis, Minnesota 55402. The issues with respect to the fairness of the proposed settlement and the attorneys' fees and costs sought by Plaintiffs' counsel were briefed and argued. Based upon such briefs and arguments, and upon the other files and records in this matter, the Court finds and orders as follows:

1. The action against Chemical was commenced on or about June 21, 1991. The action against Margaretten was commenced on June 15, 1994. An Amended Complaint is being filed in this action naming Chemical as an additional Defendant following the acquisition of Margaretten by Chemical.

2. This action may, for settlement purposes, be maintained as a class action with the class consisting of two subclasses: (a) all persons with escrowed mortgage loans being serviced or subserviced by Defendant as of January 1, 1995, and (b) all persons who formerly had escrowed mortgage loans that were serviced or subserviced by defendant or its predecessors for a period of at least twelve (12) consecutive months between January 1, 1981 and December 31, 1994 (the "paid off loan class period"), which loans were paid off, transferred or otherwise removed from Defendant's books and records, or whose escrow accounts were waived by Defendant during the paid off loan class period. For those persons who formerly had escrowed mortgage loans secured by real property located in the State of Ohio, the paid off loan class period is January 1, 1976 to December 31, 1994. Included in the existing mortgagor subclass are those loans as of January 1, 1995, by Bank of America for Margaretten & Company, Inc.

3. The Plaintiffs as class representatives, fairly and adequately represent the interests of the class, and have no interests antagonistic to the Class.

4. The notice previously given to class members in this action satisfies the requirements of due process and the requirements of Rule 23 Minnesota Rules of Civil Procedure. Notice of the pendency of the action and of the proposed settlement was mailed and published.

5. The Settlement Agreement is fair, reasonable and adequate as to each member of the class.

The settlement provides for substantial changes in the method of accounting mortgage escrow impound accounts to be utilized by the Defendant, and substantially reduces the amount of money required to be maintained in mortgage escrow accounts for a substantial proportion of the Class. In similar cases, involving approximately the same number of loans and exactly the same changes in methodology, these changes have resulted in refunds to the Class of $10 Million to $14 Million. In addition to this Refund, the Class will receive $50,000 representing and imputed interest penalty for use of funds allegedly improperly maintained in escrow impound accounts by Defendant. The Court considers these changes in methodology, refunds, and cash payments to the Class to represent fair, reasonable and adequate compensation to the Class in highly disputed litigation.

6. The positions asserted by the Defendant have received some support from HUD, and from other Courts that have considered the merits of Plaintiffs' claims. It is anything but certain that Plaintiff would prevail on their substantive claims, or even achieve as good a result as the outcome provided for in the settlement, if the case were litigated to a conclusion.

7. Each member of the class is bound by the terms of the

Settlement Agreement, including those regarding the ongoing servicing of their mortgage escrow accounts, and the release and covenant not to sue provided for in the Settlement Agreement between the parties. The mortgage contract of each member of the class is amended, as provided for in the Settlement Agreement, to expressly include the provisions for ongoing servicing of the mortgage escrow impound account in the manner provided for in the Settlement Agreement.

8. The comments of those objecting to the settlement have been considered and are found to be lacking merit and do not justify denying approval of this settlement.

9. As soon as practicable and commercially reasonable, but in all events within one (1) year of the date when this Order becomes final as set forth in the Settlement Agreement, Defendant shall institute, or to the extent it has already been instituted, continue to use, the methodology for servicing the escrow accounts of the class members set forth in the Settlement Agreement.

10. Chemical will facilitate redemption and processing of the credits, as set forth in paragraph 10 of the Settlement Agreement, as soon as practicable after the Effective Date of the Settlement Agreement.

11. Within ten (10) days of the date when this Order become final as set forth in Paragraph 20 of the Settlement Agreement, Defendant shall pay to Zimmerman Reed as and for attorneys' fees, costs and expenses not to exceed $250,000 from Defendant. All remaining sums to be paid under the terms of the Settlement Agreement shall then be credited or paid to members of the Class, as provided for in the Settlement Agreement and in paragraph 17 herein.

12. All claims in the litigation against Defendant are dismissed on the merits and with prejudice. Each member of the class is permanently enjoined from bringing, joining or continuing to prosecute against Defendant or any released person or entity as set forth in the Settlement Agreement any claim that was, could have been or may be brought in this action or otherwise for which a release and covenant not to sue is given in the Settlement Agreement. Any party violating the Court's injunction shall be required to pay the costs and attorneys' fees incurred by any released party as a result of a violation of the Court's injunction.

13. The Court hereby retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement between the parties.

14. Unclaimed funds from the settlement fund will be paid over to the Habitat for Humanity.

15. No later than April 1, 1997 and on or before April 1st of each of the following four years through the year 2001, Defendant shall file with the Court, and serve on Plaintiffs' counsel, the following information:

> a. the total dollar amount of funds refunded to mortgagors for escrow accounts maintained in the previous calendar year; and
>
> b. the total number of discount certificates redeemed pursuant to Paragraph 10 of the Settlement Agreement during the previous calendar year.

16. Within 120 days after the Effective Date of the Settlement Agreement, or as soon thereafter as practicable, Defendant will file with the Court, and serve upon Plaintiffs' counsel, a list of all checks that have been sent to Former Class members and a confirmation that any remaining funds in the rebate pool have been distributed to the charity specified in Paragraph 11 of the Settlement Agreement. Any filings may, at Defendant's option, be done in magnetic tape or other electronic or computer medium or format.

17. The Findings and Dismissal Order and the Court's Order Awarding Class Counsel Fees and Costs shall be deemed final, in accordance with paragraph 20(a) of the Settlement Agreement, ninety-five (95) days, rather than sixty-five (65) days, after the entry of judgment thereon to reflect the intent of the parties that sufficient time elapse for the filing of any appeals from the Court's orders and/or judgment, including a reasonable time for filing by mail, before the Settlement Agreement shall be deemed "Effective", as provided in paragraph 23 thereof. The remaining provisions of said paragraph 20 of the Settlement Agreement shall remain in full force and effect.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.

Dated: February 7, 1996 s/ Marilyn J. Justman

Judge Marilyn J. Justman
Hennepin County District
Court Judge

OPPOSITION
BRIEF

96-1322 ②

Supreme Court, U.S.
FILED
MAR 21 1997
CLERK

No. 96-3122

In the
Supreme Court of the United States
October Term, 1996

LINDA FUTTERMAN,
Petitioner,

vs.

ANDREA T. NASSET, et al., MARGARETTEN & COMPANY, INC. AND CHEMICAL MORTGAGE COMPANY,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Robert J. Pratte
Counsel of Record
Margaret K. Savage
Briggs and Morgan
2400 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 334-8400

Attorneys for Respondents

1997 – Bachman Legal Printing ■ (612) 339-9518 ■ FAX (612) 337-8053

124 pp

TABLE OF CONTENTS

Page

STATEMENT OF JURISDICTION 1

STATEMENT OF THE CASE 1

ARGUMENT 3

A. Summary of Argument 3

B. Petitioner Failed to Abide By the Requirements of the Law of the State of Minnesota Governing Appeals 3

C. Petitioner's Arguments are Frivolous 8

CONCLUSION 9

Page

TABLE OF CITATIONS

Cases Cited:

Board of Dirs. of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537 (1987) 8

Edelman v. California, 344 U.S. 357 (1953) 5

Exxon Corp. v. Eagerton, 462 U.S. 176 (1983) 6

Flooring Removal Inc., v. Ryerson, 447 N.W.2d 429 (Minn. 1989) 6

Geraci v. Eckankar, 526 N.W.2d 391 (Minn. Ct. App. 1995) review denied 6

Greer v. Kooiker, 312 Minn. 499, 253 N.W.2d 133 (1977) 6

John v. Paullin, 231 U.S. 583 (1913) 5

Contents

Page

Krug v. Independent Sch. Dist. No. 16, 293 N.W.2d 26 (Minn. 1980) 7

Michigan v. Tyler, 436 U.S. 499 (1978) 5

Newman v. Gates, 204 U.S. 89 (1907) 5

Novack v. Northwest Airlines, Inc., 525 N.W.2d 592 (Minn. Ct. App. 1995) 6

State v. M.A.P., 281 N.W.2d 334 (Minn. 1979) 7

Township of Honner v. Redwood County, 518 N.W.2d 639 (Minn. Ct. App. 1994), review denied 4

Statutes Cited:

28 U.S.C. § 1257(a) 1

Minn. Stat. § 480A.06 (1996) 3

Rules Cited:

Minn. R. Civ. App. P. 104.01 . . . . 2, 4

Contents

Page

Minn. R. Civ. App. P. 126.02 4

Minn. R. Civ. P. 117 7

Sup. Ct. R. 10(c) 1, 3

APPENDIX

Appendix A -- Objection of Class Member Linda Futterman to Proposed Settlement Dated December 5, 1995 . . . . A-1

Appendix B -- Statement of the Case of Appellant dated July 22, 1996 . . . . A-26

Appendix C -- Petition to the Supreme Court of the State of Minnesota for Review of Decision of Court of Appeals of Linda Futterman dated October 23, 1996 . . . . A-31

STATEMENT OF JURISDICTION

Petitioner purports to invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a), alleging that a court of the State of Minnesota "has decided an important question of federal law which has not been, but should be, settled by this Court," Sup. Ct. R. 10(c).

Petitioner's averments are incorrect. Neither the Minnesota Supreme Court nor the Minnesota Court of Appeals decided any question of federal law. Petitioner, acting through her chosen counsel, failed to abide by the statutes and practice of the State of Minnesota governing appeals. Based upon Petitioner's failure to properly pursue her appeal, her appeal was dismissed on grounds based solely on the law of the State of Minnesota.

This Court is therefore without jurisdiction to grant Petitioner's Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Petitioner was an unnamed member of a purported class of mortgagors who commenced an action against Chemical Mortgage Company and Margaretten & Company, Inc. ("Respondents") in the Minnesota district court, Hennepin County, Minnesota. The alleged class was represented by the law firm of Zimmerman Reed.

Negotiations between Respondents and the Zimmerman Reed firm ultimately resulted in a settlement agreement which resolved all claims in the purported class action. Petitioner acknowledges that she received timely notice of the proposed settlement, which included, among other matters, information regarding her right to object to the settlement.

Acting through her husband, an attorney licensed in the State of New York, Petitioner filed written objections to the proposed settlement with the Minnesota district court. (Respondents' Appendix, "R. App." A-1) These written objections did not raise any due process issues or any other matters of federal law. *Id.* On February 8, 1996, the district court issued its Amended Findings of Fact and Order approving the settlement. Judgment approving the settlement was thereafter entered on February 27, 1996. (Petitioner's Appendix, "App." 4a) Under Rule 104.01, Minn. R. Civ. App. P., the time for appealing from this judgment expired 90 days after entry of judgment, i.e., on May 28, 1996.

On July 22, 1996, Petitioner, again acting through her attorney husband, purported to appeal from the approval of the settlement agreement by mailing appeal papers to the Minnesota Court of Appeals. The issues Petitioner proposed to raise with the Minnesota Court of Appeals did not include any due process issues nor any other matters of federal law. (R. App. A-26) By order dated September 24, 1996, the Minnesota Court of Appeals dismissed Petitioner's appeal on the grounds it was not timely. (App. 2a)

Petitioner thereafter sought discretionary review by the Minnesota Supreme Court of the order dismissing her appeal, attempting to raise, for the first time, the claimed violation of Petitioner's due process rights by virtue of the supposed failure of class counsel to apprise her of her rights to appeal from the judgment approving the settlement. (R. App. A-31) By order dated November 20, 1996, in the exercise of its discretion, the Minnesota Supreme Court denied her petition. (App. 1a)

ARGUMENT

A. Summary of Argument

Petitioner seeks a Writ of Certiorari to the Minnesota Court of Appeals, alleging as the basis for this Court's jurisdiction that the Minnesota "state court . . . has decided an important question of federal law which has not been, but should be, settled by this Court," citing Sup. Ct. R. 10(c). Contrary to Petitioner's assertions, the Minnesota appellate courts did not decide any issue of federal law. This Court therefore lacks jurisdiction over Petitioner's claim because the dispositive issue was one of state law: to wit, the procedural requirements under Minnesota law for pursuing appeals.

B. Petitioner Failed to Abide By the Requirements of the Law of the State of Minnesota Governing Appeals

Petitioner's appeal from the judgment approving the settlement was to the Minnesota Court of Appeals, which has jurisdiction of appeals from all final decisions of the trial courts, with certain exceptions not applicable here. Minn. Stat. § 480A.06 (1996). Petitioner's purported appeal from the judgment, however, was made nearly two months after the appeal period expired on May 28, 1996. Minn. R. Civ. App. P. 104.01.

Petitioner's appeal was therefor fatally defective because it was not timely. Under Minnesota law, the Court of Appeals may not extend the time for appeal, and lacks jurisdiction to hear appeals that are not timely. Township of Honner v. Redwood County, 518 N.W.2d 639 (Minn. Ct. App. 1994), review denied (Sept. 16, 1994); Minn. R. Civ. App. P. 126.02.

The Order of the Minnesota Court of Appeals was clearly and unequivocally based upon these fundamental principles of Minnesota appellate law. There can be no question that the State of Minnesota has the authority to determine the manner in which appeals from the state courts shall be made, and it is incumbent upon those practicing in the Minnesota state courts, including Petitioner's husband-attorney, to proceed in accordance with Minnesota law. Since the Order of the Minnesota Court of Appeals dismissing Petitioner's appeal was based upon an adequate state ground, no appeal to this Court can be had:

> Failure to present a federal question in conformance with state procedure constitutes an adequate and independent ground of decision barring review in this Court, so long as the State has a legitimate interest in enforcing its procedural rule.

Michigan v. Tyler, 436 U.S. 499, 512 n.7 (1978). The circumstance that Petitioner may seek state appellate review of a federal issue does not change this result:

> Without any doubt it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law.

John v. Paullin, 231 U.S. 583, 585 (1913).

This Court therefore lacks jurisdiction over Petitioner's attempted appeal, because Petitioner's failure to prosecute her appeal in accordance with the laws of the State of Minnesota negates the required element that the highest court of the State of Minnesota has ruled upon the question. Where a petitioner has failed to properly prosecute an appeal, it is though "no appeal had been prosecuted from the judgment rendered by the trial court." (Newman v. Gates, 204 U.S. 89, 95 (1907). In these circumstances, this Court is "without power to decide whether constitutional rights have been violated . . ." Edelman v. California, 344 U.S. 357, 358 (1953).

Beyond Petitioner's failure to file her appeal within the prescribed 90 day period, there was an additional infirmity to Petitioner's purported appeal to the Minnesota Court of Appeals: the federal question upon which Petition claims this Court's jurisdiction would not have been the subject of appellate review, because Petitioner had not raised this due process argument in the trial court. Under Minnesota law, failure to raise a question in the trial court generally precludes an appellate court from considering the question. An unlitigated issue cannot be asserted for the first time on appeal. Greer v. Kooiker, 312 Minn. 499, 253 N.W.2d 133 (1977); Geraci v. Eckankar, 526 N.W.2d 391 (Minn. Ct. App. 1995) review denied, (Minn. Mar. 14, 1995), cert. denied, 116 S. Ct. 75. This rule applies whether the question is one of fact or of law. Novack v. Northwest Airlines, Inc., 525 N.W.2d 592 (Minn. Ct. App. 1995) Indeed, since Petitioner did not raise her claim in the trial court, the Minnesota Court of Appeals would have committed error if it had identified and then decided the question. Flooring Removal Inc., v. Ryerson, 447 N.W.2d 429 (Minn. 1989). Raising a federal question for the first time on appeal is ordinarily too late to invoke this Court's certiorari jurisdiction. Exxon Corp. v. Eagerton, 462 U.S. 176, 181 n.3 (1983).

Although Petitioner seeks a Writ of Certiorari to the Minnesota Court of Appeals, her due process argument is devoted exclusively to the Order of the Minnesota Supreme Court declining further review of the Order of the Minnesota Court of Appeals. The first time Petitioner raised her federal due process claim was in her Petition to the Minnesota Supreme Court for further review of the September 24, 1996 Order of the Minnesota Court of Appeals. Petitioner had no right under Minnesota law to appeal to the Minnesota Supreme Court; review of any decision of the Minnesota Court of Appeals is discretionary with the Minnesota Supreme Court. Minn. R. Civ. App. P. 117, subd. 1. Petitioner has advanced no contention that the Minnesota Supreme Court failed to exercise its discretion in accordance with the requirements of Minnesota law.[1]

The Order of the Minnesota Supreme Court denying Petitioner's Petition for further review did not identify the grounds upon which the Minnesota Supreme Court relied in determining that review was unwarranted.[2] This declination to accept review does not operate as an adjudication of Petitioner's due process claim. To the contrary, the Order of the Minnesota Supreme Court was presumptively based upon Petitioner's failure to abide by the procedural requirements of Minnesota state law. Respondents have the benefit of an assumption that an absence of a discussion by the highest court of a state is attributable to Petitioner's failure to properly present the federal question. Board of Dirs. of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 549 (1987). Petitioner has not, and cannot, rebut that assumption.

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[1] The criteria which the Minnesota Supreme Court may consider in determining whether to grant discretionary review of an order of the Minnesota Court of Appeals is set forth in Rule 117, Minn. R. Civ. App. P.

[2] Petitioner cites two cases, Krug v. Independent Sch. Dist. No. 16, 293 N.W. 2d 26 (Minn. 1980) and State v. M.A.P., 281 N.W. 2d 334 (Minn. 1979) for the proposition that the Minnesota Supreme Court may exercise jurisdiction over appeals which are not taken in a timely manner. Petitioner, however, did not appeal to the Minnesota Supreme Court, she petitioned the Minnesota Supreme Court for further review of the Order of the Minnesota Court of Appeals.

C. Petitioner's Arguments are Frivolous

The underlying premise of Petitioner's argument is that legal counsel for the class owed Petitioner the obligation to provide her with advice regarding her appeal rights in the event her objections to the settlement were not adopted by the trial court. In light of the uncontroverted facts of this case, Petitioner's argument is frivolous. It is clear that Petitioner did not rely on the Zimmerman Reed firm to provide her with such legal advice; to the contrary, she relied on her attorney-husband to represent her in pressing her objections to the settlement and in prosecuting her appeal from the judgment approving the settlement.

Petitioner's counsel was not admitted to practice law in the State of Minnesota, and had no knowledge of the requirements of Minnesota law and practice. Indeed, Petitioner's counsel has acknowledged that he "filed in accordance with the procedures used in New York sate courts and the federal courts." (Petition for a Writ of Certiorari, n.2) Certainly it must have been apparent that appellate procedure in the courts of the State of Minnesota would be governed by Minnesota law, not New York or federal law. Petitioner's attempt to parlay her chosen counsel's inexperience in the governing law into a claimed deprivation of her constitutional rights should not be countenanced by this Court.

CONCLUSION

Respondents respectfully request that Petitioner's Petition for Writ of Certiorari be dismissed for lack of jurisdiction and for the other reasons set forth above.

Dated: March 20, 1997.

Respectfully Submitted,

BRIGGS AND MORGAN, P.A.

By_______________________
Robert J. Pratte
Counsel of Record
Margaret K. Savage
2400 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 334-8590

Attorneys for Respondents
Margaretten & Company, Inc.
Chemical Mortgage Company

APPENDIX A

OBJECTION OF CLASS MEMBER LINDA FUTTERMAN TO PROPOSED SETTLEMENT DATED DECEMBER 5, 1995

STATE OF MINNESOTA — DISTRICT COURT
HENNEPIN COUNTY — FOURTH JUDICIAL DISTRICT

Andrea T. and Peter J. Nasset;) Case No. 94-9230
Molly K. Olson; Randall C. Johnson;)
Kenneth and Nancy French,)
and all others similarly situated,)
) **OBJECTION OF**
Plaintiffs,) **CLASS MEMBER**
) **LINDA**
v.) **FUTTERMAN**
) **TO PROPOSED**
Margaretten & Company, Inc.,) **SETTLEMENT**
Chemical Mortgage Company,)
)
Defendants.)

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1. The undersigned, an attorney admitted to practice in the courts of the State of New York, the United States Supreme Court and various inferior federal courts, represents Dr. Linda Futterman, a mortgager of the fee interest in condominium apartment 7D at 153 E. 87th Street in the City, County and State of New York. The apartment was purchased on December 6, 1991, in part with the proceeds of a loan from Chemical Mortgage Company, payable over a 15 year period, and secured by a mortgage. Dr. Futterman is thus apparently a member of the plaintiff class. She received on November 10,

1995 an undated notice of a hearing, scheduled for January 12, 1996, on a proposed settlement of the action ("Notice").

2. Dr. Futterman objects: a) to the Notice, on the grounds that it provides insufficient disclosure and purports to establish unreasonable barriers to the presentation of objections, and b) to the proposed settlement itself, on the grounds that it provides for inadequate and deficient remedies to the members of the class and apparently exorbitant rewards to the attorneys for the class, to the detriment of class members.

3. More specifically, Dr. Futterman objects to:

(i) The inadequacy of the rebate pool and the limitation of its benefits to "Former Mortgagors" who submit superfluous claim forms.

The proposed settlement calls for Chemical to establish "a rebate pool in the amount of fifty thousand dollars ($50,000)" and to pay a "one time rebate to each Former Mortgager who timely submits a claim form, properly completed," with the proviso that "no individual Former Mortgagor shall receive a refund in an amount greater than $25 and the total amount of refund shall not exceed fifty thousand dollars ($50,000)" (Notice, ¶C.1.)

The Notice does not disclose:

1) how many Former Mortgagors there are;
2) why it should be necessary to require each Former Mortgager to submit a claim form in order to share in the proceeds of the rebate pool;

3) why the participants in the rebate pool should be limited to Former Mortgagors, and not include Existing Mortgagors; nor
4) what relationship the $50,000 maximum pay-out by Chemical bears to the total estimated losses suffered by class members as a result of Chemical having used accounting methods that have resulted in excess funds being held in mortgage escrow accounts over the past fourteen years (January 1, 1981 to December 31, 1994).

Some sense of the magnitude of these losses, and some disquieting answers to questions 2, 3 and 4 above may, however, be gleaned from provisions of the Settlement dealing with matters other than the rebate pool. Thus, the proposed settlement states that if all Existing Mortgagors were to redeem a $125 credit towards the cost of refinancing or obtaining a new first mortgage loan from Chemical, the total of the credits "would be in excess of thirty-five million dollars ($35,000,000)" (Notice, ¶ D.1). The number of Existing Mortgagors is thus necessarily more than 280,000 (35 million , 125 = 280,000).

The Notice also discloses that once Chemical completes the accounting changes required by recently issued HUD regulations, "it is estimated that Chemical will refund several million dollars to Class members that are currently being held in escrow accounts" (Notice, ¶B.2.) Since the rebate pool is limited to $50,000, only 2,000 Former Mortgagors could get as much as $25 each before the pool was exhausted. Since the number of Existing Mortgagors exceeds 280,000, the number of Former Mortgagors (defined as all persons who formerly had escrowed residential mortgage loans serviced or subserviced by Chemical or its predecessors for a period of twelve consecutive months at any time during the period

January 1, 1991 to December 31, 1994 ..." [(Notice, ¶A.1.]), may well exceed 100,000. If the number is only 100,000, equal pro rata shares of a $50,000 rebate pool would yield only 50 cents apiece. If the existing 280,000 + mortgagors were also to share in the pool, the individual pro-rata shares would be on the order of a dime. Thus, it is likely:

1) that the Notice does not disclose the number of Former Mortgagors who are to share in a $50,000 rebate pool because that number is embarrassingly large;

2) that each Former Mortgagor who wishes to share in the pool is required to go through the irksome and unnecessary bureaucratic procedure of submitting a claim, which would largely provide Chemical only with information it already has, in order to depress the number of Former Mortgagors who may share in the pool, thus keeping the probable individual recovery (barely) above the cost of postage required to submit a claim;

3) the participants in the rebate pool are limited to Former Mortgagors because it would be too easy to calculate, from what is disclosed in the Notice about the number of Existing Mortgagors, that the individual pro rata shares of all Mortgagors, if they all could participate in the pool, would be ludicrously low; and

4) the losses suffered by all Chemical mortgagors over the last 14 years, computed as the difference in (i) interest paid to the mortgagors on excess funds in their escrow accounts, and (ii)

> the profits those mortgagors could have realized from secure investment of those funds (say, in U.S. Treasury bills) is on the order of $2,100,000 (5% X $3,000,000 [assuming "several million dollars," Notice, ¶B.2, to mean approximately $3 million] X 14 years), without compounding the excess interest retained by Chemical.
>
> A rebate pool capped at $50,000 thus represents a settlement at much less than 1/40 of the amount in issue. It would take an overwhelmingly powerful case for Chemical -- whose existence the Notice does not so much as hint at -- to justify that degree of discount.

There have recently been a number of class actions against banks and mortgages companies arising out of the reforms in escrow accounting recently instituted by the United States Department of Housing and Urban Development ("HUD"). That those defendants have been willing to enter into settlements that are far more favorable to class members than the proposed settlement in this action is shown by the Notice of Hearing of Proposed Settlement of Class action in Bradley v. Peoples Westchester Savings Bank, 95 C 2242 (USDC, N.D. Ill.), annexed hereto as Exhibit A. That settlement is hardly a model for a settlement favorable to class members, but the defendant bank there did agree to pay $21.50 to each class member, in addition to refunds arising from the conversion to aggregate escrow accounting, without any cap on the total amount to be paid out, without any distinction between former and existing mortgagors in their eligibility to receive that rebate, and without any requirement that class members "timely submit a claim form properly completed." See Exhibit A hereto at p. 4, ¶C.7.

(ii) The Sham "Value" of Providing Settlement Credits to Existing Mortgagor Class Members.

The largest portion of the so-called "total value of the settlement" (Notice, ¶ E.1), on which the attorneys fees would apparently be calculated, consists of a "one hundred twenty-five dollar ($125) credit which can be used to reduce the costs of refinancing or obtaining a new first mortgage loan from Chemical" (id., ¶ D.1.), during the period from the effective date of the settlement until March 27, 2001 (id., ¶ D.3). The Notice states that "the total of these credits, if all are redeemed would be in excess of thirty-five million dollars ($35,000,000)" (id).

Whether these "credits" would be of actual value to class members, however, is doubtful. Nothing in the Notice suggests that the Settlement contains any restrictions on Chemical's mortgage application processing fees. Thus, Chemical could, consistent with the described Settlement, increase its standard processing costs enough to compensate for the $125 "credit."

Moreover, the $35,000,000 + value claimed in the Notice is patently fictitious. In order for class members to realize that much value, at least 280,000 class members would have to refinance or obtain a new first mortgage loan. If the average current mortgage loan for Chemical is, say, $100,000 (Dr. Futterman's loan, four years ago, was 1 1/2 times that), Chemical would have to make available $28 billion ($28,000,000,000) (280,000 X $100,000) over the next five years for that purpose alone. The Notice gives no indication that Chemical is in a position to extend that much credit in this one sub area in addition to all the other lending it must do to maintain market share. And, if it had the resources to lend at that level and wished to do so, the $125 credit per transaction it would extend -- even assuming it were an actual "credit" --

would apparently be well worth it as a marketing "comeon"; it would amount, on the assumption of a $100,000 average loan, to giving back little more than one-tenth of one percent of the face amount of the loans (125 basis points), one time per multiyear transaction.

(iii) Unreasonable and/or Unjustified Attorneys Fees and Costs.

The proposed settlement calls for an award of "reasonable attorney's fees and costs to be paid by Chemical based upon the total value of the settlement, including the credits [worth an asserted $35,000,000], the several million dollars in refunds [which would have been payable anyway during the next two years pursuant to HUD requirements (Notice, ¶B.2)], and the cash rebates [i.e. the $550,000]" (Notice, ¶ E).

As part of the settlement, it appears that plaintiffs' attorneys got Chemical to agree "not to object to any award of fees and costs which does not exceed the sum of $250,000" (id.). Or, perhaps, Chemical got plaintiff's counsel to agree to all the elements of the settlement identified above which are more favorable to Chemical than to the class members in return for Chemical agreeing not to object to an award of $250,000. In any event, the Notice does not disclose any of the information that would be necessary to determine if the quarter-million dollar attorneys' fee award is "reasonable." For example, no indication is given of:

1) The number of attorney and paralegal hours spent in prosecution of the action;

2) The customary and usual hourly rates of the attorneys and paralegals involved;

3) The amount of disbursements incurred;

4) The novelty and degree of difficulty of the legal and factual questions involved;

5) The nature of the tasks performed by the attorneys and the distinction with which they were accomplished;

6) The degree of risk involved in undertaking this litigation -- one of a number of near identical cases brought around the country in the wake of the HUD escrow reforms;

7) The extent to which the negotiation of the attorneys' fee was separated from the negotiation of the merits of the action so as to avoid a conflict of interest on the part of class counsel. See American Bar Association, Lawyer's Code of Professional Responsibility, Ethical Consideration 5-2 (1969):

> After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client.

The annexed Notice of Hearing in the Peoples Westchester case limits the fees to which the defendant bank agreed not to object to $52,435.50, allows only an additional $4,000 for costs and disbursements, and discloses the basis upon which the fees were calculated (Exhibit A, p. 4, ¶D.8). A similar approach, perhaps pegged to the time charges incurred, should be followed here.

iv) Procedural Obstacles to Objecting to the Settlement.

The Notice discourages rather than invites comments on the proposed settlement. There is no statement that Objections may simply be filed with the Court. Rather, the Notice states:

> If you desire to appear at the hearing and object to the proposed Settlement Agreement described above or to the proposed award of legal fees and expenses, you must file a written notice of intent to appear.
>
> Notice, ¶H.1.

It is highly doubtful that many class members outside Minneapolis will have enough economic interest in the settlement to justify a trip to the Hennepin County Courthouse. Yet that is what the Notice seems to require as a pre-requisite to objection. To the extent that the Notice does so require the Court should dispense with the requirement and consider all objections from members of the Class, including those submitted only in writing.

4. Conclusion

The proposed settlement should be rejected by the Court. At a minimum, the Court should require, as a condition of its approval, that the $250,000 in agreed-upon attorneys fees and costs be added to the rebate pool and that participation in the pool be automatically extended to all Existing Mortgagors and Former Mortgagors, subject to a portion of the pool being awarded as reasonable attorneys fees to class counsel, and to other counsel for members of the class whose participation in the action contributes to an improvement in the settlement for class members.

Respectfully submitted,

/s/ Stanley Futterman
Stanley Futterman
Attorney for Class Member/Objector
Dr. Linda Futterman
292 Madison Avenue
New York, New York 10017
(212) 696-0655

Dated:

New York, New York
December 5, 1995

cc: Charles S. Zimmerman
Barry G. Reed
Zimmerman Reed
5200 Norwest Center
99 South Seventh Street
Minneapolis, MN 55402

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

BRINDA BRADLEY,)
JAMES BRADLEY,)
CORINE BRADLEY)
and the class of similarly)
situated mortgage customers)
whose mortgages are being)
serviced by Peoples Westchester)
Savings Bank,)
)
Plaintiffs,)
)
- against -)
)
PEOPLES WESTCHESTER)
SAVINGS BANK,)
)
Defendant.)

MDL No. 899

In re Mortgage Escrow Litigation

(Hon. James B. Zagel)

NOTICE OF HEARING ON PROPOSED SETTLEMENT OF CLASS ACTION

95 C 2242

ZAGEL

TO: ALL PERSONS (AND IN THE CASE OF DECEASED OR DISABLED PERSONS, THEIR ESTATES, PERSONAL REPRESENTATIVES, BENEFICIARIES OR CONSERVATORS) FOR WHOM PEOPLES WESTCHESTER SAVINGS BANK MAINTAINED MORTGAGE ESCROW ACCOUNTS WITH RESPECT TO RESIDENTIAL REAL ESTATE MORTGAGE LOANS ORIGINATED OR SERVICED BY PEOPLES WESTCHESTER SAVINGS BANK AND OUTSTANDING AS OF DECEMBER 30, 1993:

EXHIBIT A

This Notice concerns the proposed settlement of the above-referenced lawsuit which, on April 18, 1995, the Hon. James B. Zagel of the United States District Court, Northern District of Illinois conditionally determined should proceed as a class action with James and Corine Bradley as the representatives of the Class. This Notice is being sent to you because you may be a member of the Class. THIS NOTICE IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.

Notice is hereby given that a hearing will be held in the United States District Court, Northern District of Illinois at the United States Courthouse, 219 S. Dearborn Street, Chicago, Illinois 60604 at 11:00 A.M. on the 18th day of July, 1995, to determine whether Judge Zagel should approve and confirm a proposed settlement of all aspects, both monetary and equitable, of the lawsuit as fair, reasonable and adequate. This Notice is not an expression by the Court as to the merits of any claim or defense asserted by the parties. Copies of the proposed Settlement Agreement, as well as the prior proceedings in this case, are available for your review and inspection in the Clerk's Office at the United States Courthouse in Chicago, Illinois during regular business hours. THIS NOTICE DOES NOT AFFECT YOUR OBLIGATION TO MAKE TIMELY PAYMENTS IN ACCORDANCE WITH THE TERMS OF YOUR MORTGAGE.

SUMMARY OF PRIOR PROCEEDINGS

Plaintiffs' Complaint alleged that defendant Peoples Westchester Savings Bank ("Peoples") required its mortgagors to pay into their escrow accounts for real estate taxes, insurance and other assessments, amounts in excess of the amount permitted by the mortgage contracts originated by and/or serviced by Peoples prior to December 30, 1993, the date on which Peoples was acquired by First Fidelity Bank, N.A., New York ("FFBNY"). Plaintiffs alleged that peoples' practices with respect to the calculation and accumulation of escrow payments amounted to a breach of the mortgage contracts and were unlawful.

First Fidelity, N.A. ("First Fidelity"), as the successor-by-merger to FFBNY (and therefore the ultimate successor-by-merger to Peoples), denies that any of its, FFBNY's or Peoples' actions with respect to the escrow accounts and related Peoples mortgages (which mortgages are presently being serviced by First Fidelity) were unlawful or violative of the mortgage contracts or any laws. First Fidelity has asserted that the method which Peoples used to calculate escrow payments was permissible under the relevant mortgage contracts and was specifically approved by the Department of Housing and Urban Development ("HUD") as permissible under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. ("RESPA"), which extensively regulates servicers with respect to escrow accounts. Plaintiffs have not alleged any unlawful activity by either FFBNY or First Fidelity in connection with their servicing of mortgage escrow accounts or related mortgage loans formerly serviced by Peoples.

Notwithstanding First Fidelity's denial of liability or unlawful conduct by itself, Peoples or FFBNY, First Fidelity has decided that it is in its best interest to settle this litigation on the terms set forth in the proposed Settlement Agreement to avoid further expense, inconvenience and interference with its ongoing business operations. If approved by the Court, the proposed settlement will resolve all matters which in any way relate to any aspect of this case, including claims for both equitable and monetary relief and any fees and expenses in connection therewith.

Counsel for the Class has investigated the facts, analyzed the applicable law, and has considered such other sources of information as they deemed to be necessary to evaluate the fairness of the proposed settlement. Based on counsel's review of the facts and the law and their evaluation of the immediate benefits which the settlement will afford the Class, counsel for the Class has determined that the proposed settlement is fair, reasonable, adequate and in the best interests of the Class. Plaintiffs' counsel recommends that all Class members approve the proposed settlement. The Court has tentatively approved the proposed settlement and conditionally determined that this case should proceed as a class action. However, the Court will not take the final action until the hearing referred to above is held. The terms of the proposed settlement are summarized below.

SUMMARY OF THE TERMS OF PROPOSED SETTLEMENT AGREEMENT

The following description of the proposed settlement is a summary only. For further reference, the proposed Settlement Agreement is on file with the Clerk of the Court whose name and address is set out below:

A. Parties Bound by the Settlement

1. The settlement will apply to, and conclusively bind all parties to this action, including the named plaintiffs, members of the plaintiff Class (named or unnamed) and First Fidelity, its predecessors-in-interest and its successors and assigns.

2. The Class consists of all persons (and in the case of deceased or disabled persons, their personal representatives), for whom Peoples, as of December 30, 1993, maintained escrow accounts ("Peoples Escrow Accounts") with respect to outstanding residential home mortgage loans ("Peoples Escrow Loans").

B. First Fidelity's Conversion of Escrow Accounts to the Aggregate Method of Computing Escrow Deposits

3. Prior to its merger with FFBNY, Peoples used an accounting methodology referred to as "individual item analysis" to compute the monthly escrow payments required to be made by the members of the Class with respect to the Peoples Escrow Loans. Under individual item analysis, the servicer, in effect, maintains separate escrow accounts for each disburseable item of escrow expense.

4. The maintenance of escrow accounts by mortgage servicers is subject to Section 10(a)(2) of RESPA, which imposes a statutory ceiling on the amount of money that a mortgage borrower may be required to pay into an escrow account beginning with the first full installment payment under a mortgage. While HUD (the Department of the Government of the United States charged with regulating escrow practices under RESPA) has previously authorized mortgage servicers to use individual item analysis to compute escrow deposits under RESPA, HUD has recently determined that the use of individual item analysis may lead to the accumulation of higher escrow balances than would otherwise be accumulated through the use of an alternative accounting method commonly referred to as "aggregate method". Accordingly, pursuant to new regulations which HUD provided would become effective on May 24, 1995, HUD recently directed all mortgage servicers to use aggregate method accounting with respect to all escrow accounts maintained in connection with any residential home mortgage loans which is originated on or after May 24, 1995. Although the May 24, 1995 effective date of the new regulations may be subject to further amendment, HUD has directed that all mortgage servicers complete by

October 27, 1997, the conversion to the aggregate method of all escrow accounts maintained with respect to residential home mortgages originated prior to May 24, 1995.

5. Upon its acquisition of the Peoples Escrow Loans on December 30, 1993, FFBNY and then First Fidelity began the process of converting all peoples Escrow Accounts to the aggregate method. In fact, you may have already received a refund from First Fidelity (or FFBNY) based upon its recalculation of the required escrow balances for the escrow account it maintains with respect to your mortgage loan.

6. Notwithstanding the 30-month "phase-in" period for conversion to aggregate method accounting mandated by HUD, First Fidelity has agreed as part of the settlement of this action to convert all Peoples Escrow Accounts to the aggregate method by the effective date of the new regulations announced by HUD (which as of the date of the date of the Settlement Agreement was May 24, 1995). First Fidelity has also agreed under the Settlement not to maintain any cushions with respect to your escrow account other than to require one-months' pre-accrual. It is anticipated that the manner in which First Fidelity has agreed to maintain your escrow account may result in lower escrow balances than would have been required if escrow balances continued to be computed in the manner formerly used by Peoples.

c. Settlement Payments to Class Members

7. In addition to any refunds which First Fidelity may already have paid (or may in the future pay) to you based upon its conversion of your mortgage escrow account to the aggregate method, First Fidelity will make a single payment (a "Settlement Payment") in the amount of $21.50 to each Class member in complete satisfaction of all claims that were raised

(or could have been raised) in this action, as well as any and all other claims for damages, pre-judgment interest, post-judgment interest or nay other monetary or injunctive relief of any nature whatsoever which have been or could have been alleged in the Complaint with respect to Peoples' servicing of your mortgage loan or the servicing of that loan by FFBNY or First Fidelity after December 30, 1993.

d. Attorneys' Fees and Costs

8. Counsel for plaintiffs and the Class will request the Court to award them reasonable attorneys' fees to be paid by First Fidelity which has agreed not to object to any award of fees which does not exceed the sum of $52,435.50 for fees (predicated on $6.50 per Peoples Escrow Loan outstanding as of December 30, 1993), and an additional $4,000 for costs and disbursements.

E. Distribution of Settlement Payments

9. First Fidelity will begin distributing Settlement Payments to all members of the Class not later than forty (40) days after the settlement has been approved by the Court, provided there is no appeal from the Order of approval. If there is any appeal from the Order of approval, and an appellate court affirms the entry of such Order so that the Settlement Agreement and each provision thereof is final, unappealable, and otherwise unreviewable and binding, First Fidelity will begin distributing the settlement payments within ten (10) days after such affirmation.

F. Release of First Fidelity From Liability

10. The settlement will be final and binding upon the plaintiffs, all individual Class members (except those who

"opt-out" or exclude themselves from the settlement Class pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure) and upon First Fidelity, its predecessors-in-interest and successors and assigns. The parties have agreed that the negotiation and execution of the Settlement Agreement and the undertakings made by First Fidelity, are in full and final settlement and compromise of all rights, duties and obligations of all parties, including the named plaintiffs and Class members, with respect to any and all issues which relate in any way to any issue or claim for monetary or equitable relief in this action.

11. Upon the date on which an Order of the Court approving the settlement becomes final, each plaintiff and Class member who has not properly and timely opted out of the settlement Class will be deemed to have released and enjoined from suing, and shall agree to refrain from proceeding in any way against either: (a) First Fidelity or its predecessors-in-interest, FFBNY and Peoples or any successor or assign thereof; or (b) any present or former officer, director, principal, agent, attorney, employer, employee, or shareholder of First Fidelity or said predecessors-in-interest and successors or assigns (the persons and entities described in (a) and (b) herein being referred to collectively as the "Releasees"); with respect to any and all past, present or future claims, actions, causes of action, rights or liabilities, known or unknown, based on, arising out of, or in any relating to or pertaining to (i) the escrow provisions of any Peoples Escrow Loan (except for claims based on the failure to remit real estate tax, insurance premiums or other escrow items, when due, to appropriate governmental or corporate entities or subdivisions, when both sufficient funds and the required information have been provided to the escrowee and claims, if any, based upon alleged improper late charges resulting from such alleged failure by the escrowee to

remit); (ii) the methodology and formula used by any Releasee to calculate and accumulate escrow deposits; (iii) the accumulation, handling, control, or use by any Releasee of the escrow funds accumulated as a result of the methodology and formula referred to in clause (ii) above, in whatever capacity; or (iv) any of the events, statements or allegations referred to in plaintiffs' Complaint (collectively, the "Released Claims"). Without limiting the generality of the foregoing, the Released Claims shall include all claims, actions, rights or causes of action arising under RESPA, and any and all regulations promulgated pursuant to RESPA; the Racketeer Influenced and Corrupt Organizations Act ("RICO"); the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601, et seq. and Regulation Z, 12 C.F.R. Part 226 promulgated pursuant thereto; Section 349 of the New York General Business Law, and all corresponding statutes prohibiting consumer fraud and/or unfair and deceptive trade practices of all states wherein Class members reside, or the common law.

12. Neither the negotiation nor execution of the Settlement Agreement, nor the entry of any Order approving the settlement, shall constitute an acknowledgement or admission of liability in any amount by First Fidelity or any of its predecessors-in-interest, all of whose obligations under the settlement will be limited solely to the undertakings set forth in the Settlement Agreement.

13. The Court will retain jurisdiction of this action for the purposes of issuing any and all orders or decrees as may be necessary to effectuate, clarity, modify or enforce the purpose, intent and terms of the Settlement Agreement.

G. Objections

14. If you desire to appear at the hearing and object to the proposed Settlement Agreement described above or to the proposed award of legal fees and expenses, you must file a written notice of intent to appear with the Clerk of the Court whose name and address is as follows:

H. Stuart Cunningham
Clerk
United States District Court
United States Courthouse
219 S. Dearborn Street
Chicago, IL 60604

15. If you submit a written objection to the Court, you must at the same time serve additional copies of your objection upon counsel for the plaintiff and the Class and upon counsel for First Fidelity at the following addresses:

Counsel for Plaintiffs and the Class:

Monroe & Lemann
201 St. Charles Avenue
Suite 3300
New Orleans, LA 70170
Attn: Michael R. O'Keefe, III, Esq.

Counsel for defendants:

Otterbourg, Steindler, Houston
& Rosen, P.C.
230 Park Avenue
New York, NY 10169
Attn: Stanley L. Lane, Jr., Esq.

16. You should not address any questions about the Settlement Agreement, the proposed settlement or the lawsuit to the Clerk of the Court or the Judge. If you have any questions you may contact counsel for the Class Michael R. O'Keefe, III, Esq. at (504) 586-1900, or co-counsel Daniel Harris, Esq. at (312) 207-1000.

17. You also have the right to appear at the approval hearing, either in person or through an attorney. If you have any objection to the proposed settlement, you must appear at the hearing and be available for questioning by the attorneys or the parties or by the Court. If you agree with the terms of the proposed Settlement Agreement, it is not necessary for you to appear at the hearing or indicate your approval. However, failure to file a written objection to the proposed settlement and to appear in opposition to the settlement may be deemed as an approval by you of all the terms in the Settlement Agreement. The hearing may be adjourned from time to time by the Court at the scheduled hearing or any adjourned session thereof without further written notice to you. If you do not object to the settlement of the action in accordance with the terms of the Settlement Agreement you do not have to take any action.

18. In making objections to the proposed settlement, you should understand that the Court does not have the authority to change any part of the Settlement Agreement, to award any additional amount of money or to redistribute the total amount that is being paid by First Fidelity in money, fees or expenses. The Court only has the authority to approve or disapprove the Settlement Agreement as a whole. The Court will consider any objection that you may have in deciding whether the Settlement Agreement should be approved as written. In its Order giving provisional approval to the

Settlement Agreement, the Court considered these matters on a preliminary basis and has determined that the Settlement Agreement is sufficiently fair, reasonable and adequate to be given conditional approval. The Court's conditional approval, however, does not mean that the Court will necessarily approve the proposed settlement of the action after the scheduled hearing. The Court retains the full authority to disapprove the Settlement Agreement in its entirety. If after the scheduled hearing, the Court approves the Settlement Agreement, you will be bound by all of its terms. If, after the scheduled hearing, the Court determines that the proposed settlement is not fair, reasonable and adequate, the Court will not approve the proposed settlement and the lawsuit will proceed as if no tentative settlement had been reached and no Settlement Agreement had been executed.

H. Right to Exclude Yourself from the Settlement Class

19. You also have the right to exclude yourself from the proposed settlement by "opting out" of the settlement Class. If you desire to opt-out of the Class and the settlement, you will not receive any of the benefits provided by the Settlement Agreement if the Court approves it. Rather you will have to pursue any claim you may have on your own behalf, either in this lawsuit or in a separate lawsuit. If you desire to exclude yourself from the Class and the settlement, you must do so by filling out the form enclosed with this Notice entitled "Election to be Excluded from Settlement Class". You must send a copy of this form to counsel for the plaintiffs and the Class at the address listed in paragraph "15" above prior to the 13th day of July, 1995. If you do not desire to opt-out or exclude yourself from the settlement Class, you need take no further action and you will be included and bound by all terms of the settlement as set forth above, including the release, if the Court approves the Settlement Agreement.

I. Correct Address

20. If this Notice was not sent to you at your correct address, you should immediately notify counsel for the defendant, Mr. Stanley L. Lane, Jr. (at the address specified in paragraph "17") of your current address in writing.

J. Important Rights Affected

21. This Notice of Rights in the proposed Settlement Agreement, the terms of which have been outlined for you above, may affect important rights. You should satisfy yourself that you have read this Notice carefully and understand its terms.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

BRINDA BRADLEY,
JAMES BRADLEY,
CORINE BRADLEY
and the class of similarly
situated mortgage customers
whose mortgages are being
serviced by Peoples Westchester
Savings Bank,

Plaintiffs,

- against -

PEOPLES WESTCHESTER
SAVINGS BANK,

Defendant.

MDL No. 899

In re Mortgage Escrow Litigation

(Hon. James B. Zagel)

EXECUTION TO BE EXCLUDED FROM CLASS SETTLEMENT PURSUANT TO FED R. CIV. P. 23

95 C 2242

ZAGEL

Having read the Notice of Hearing on Proposed Settlement of Class Action in the above-captioned action, the undersigned respectfully requests to be excluded from the class action and settlement.

I understand that by this request I will not receive any of the benefits provided by the Settlement Agreement, dated March 16, 1995.

Dated:____________, 1995

Name: ______________________________
Signature: ______________________________

Address: ______________________________
____

APPENDIX B
STATEMENT OF THE CASE OF APPELLANT
DATED JULY 22, 1996

STATE OF MINNESOTA

IN COURT OF APPEALS

Andrea T. and Peter J. Nasset; Molly K. Olson; Randall C. Johnson; Kenneth and Nancy French, and all others similarly situated,	)	STATEMENT OF THE CASE OF APPELLANT
	)	TRIAL COURT CASE NUMBER: 94-9240
Plaintiffs,	)	
v.	)	APPELLATE COURT CASE NUMBER:
Margaretten & Company, Inc., Chemical Mortgage Company,	)	
Defendants.	)	

Objector-Appellant Linda Futterman, pursuant to Rule 133.03, hereby submits this Statement of the Case of Appellant.

1. This case originated in the Hennepin County District Court, Fourth Judicial district in the State of Minnesota, before Honorable Judge Marilyn J. Justman.

2. This appeal is taken from a court order dated February 7, 1996. Written Notice of Appeal was served on

March 6, 1996. Clause (e) of RCAP 103.03 authorized this appeal.

3. Type of litigation: Class Action settlement.

4. This litigation involved a class of persons who had or have escrowed mortgage loans with the Bank Defendants. Plaintiffs charged that the Defendants have used accounting methods that have resulted in excess funds held in mortgage escrow accounts, in violation of the mortgage contracts and various consumer protection laws. Defendants have denied all claims. On November 10, 1995, Appellant Dr. Linda Futterman received an undated notice of a hearing, scheduled for January 12, 1996, on a proposed settlement of the action. Appellant submitted written objection to the proposed settlement on two grounds: first, because the notice for the hearing provided insufficient disclosure and established unreasonable barriers to the presentation of objections; and second, because the proposed settlement itself provided for inadequate and deficient remedies to the members of the class, as well as an exorbitant attorney award. By an Amended Findings and Order, dated February 7, 1996, Hon. Marilyn J. Justman, Hennepin County District Court Judge, approved the Settlement Agreement as "fair, reasonable and adequate as to each member of the class," and found the comments of those objecting to the settlement "to be lacking merit." By order, dated April 1, 1996, Judge Justman granted Objector Futterman's request for waiver of the requirement of a cost bond.

5. The issues proposed to be raised on appeal concern the fairness of he ordered settlement including the attorneys' fees provision. As Appellant will show in her brief, only the attorneys and the banks will benefit from this settlement, as the settlement's provision for the class members are illusory.

6. No transcript is required.

7. Oral argument is not requested.

8. Formal briefs are necessary.

9. The names, addresses, zip codes and telephone number of the attorneys for appellant and respondents are as follows:

Attorney for Appellant:
Stanley Futterman
Attorney at Law
292 Madison Avenue, 8th Floor
New York, New York 10017
(212) 532-4447

Attorney for Respondent
Nasset et al.
(Plaintiffs and class):
Charles S. Zimmerman
Barry G. Reed
Zimmerman Reed
5200 Norwest Center
99 South Seventh Street
Minneapolis, MN 55042
(612) 341-0400

Attorney for Respondents
Margaretten & Company,
et al.(Defendants):
Robert J. Pratte
Alan H. Maclin
Briggs and Morgan
2400 IDS Center
Minneapolis, Minnesota 55402
612) 334-8400

DATED: July 22, 1996.

Stanley Futterman
Attorney for Appellant,
Dr. Linda Futterman

Stanley Putterman
292 Madison Avenue, 8th Floor
New York, New York 10017

Postmark dated Jul 22'90 New York NY

Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

File #94-9240

APPENDIX C

PETITION TO THE SUPREME COURT OF THE STATE OF MINNESOTA FOR REVIEW OF DECISION OF COURT OF APPEALS OF LINDA FUTTERMAN DATED OCTOBER 23, 1996

STATE OF MINNESOTA

IN SUPREME COURT

CASE TITLE:

Andrea T. Nasset et al.,

Respondents,

PETITION FOR REVIEW OF DECISION OF COURT OF APPEALS

Linda Futterman,

Appellant,

vs.

APPELLATE COURT CASE NUMBER: C8-96-1847

Margaretten & Company, Inc. and Chemical Mortgage Company,

Respondents.

DATE OF FILING OF COURT OF APPEALS DECISION: September 24, 1996

TO: The Supreme Court of the State of Minnesota:

File #94-9240

The Petitioner, Linda Futterman, requests Supreme Court review of the above-entitled decision of the Court of Appeals upon the following grounds:

1. Statement of legal issues and their resolution by the Court of Appeals.

A. Should a resident of New York with no contacts with Minnesota, made a class action plaintiff in a Minnesota court without her knowledge and consent, be permitted to file an appeal more than 90 days after entry of a judgment approving a settlement (i) when the attorneys purportedly representing petitioner notified her of the entry of an order approving the settlement but did *not* notify her of the subsequent entry of the judgment and the requirements for filing appeals in Minnesota and (ii) when petitioner had filed an appeal with the District Court and had complied with that court's instructions by obtaining and filing a waiver of the requirement of a cost bond? The Court of Appeals held that it could not extend the time for an appeal.

B. Would the refusal to accept this appeal violate petitioner's rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution? The Court of Appeals did not address this question.

2. Statement of the criteria relied upon to support the petition.

The question presented here is an important one upon which the Supreme Court should rule. A decision by the Court will help develop and clarify the law. The resolution of the question presented has possible statewide and even national impact. The question is likely to recur unless resolved by the Supreme Court.

File #94-9240

3. Statement of the case (facts and procedural history).

This case concerns an appeal from a judgment in a class action suit filed in Hennepin County District Court by the Minneapolis firm of Zimmerman Reed over alleged mortgage escrow practices of defendants. Petitioner is a resident of New York and her mortgage was with a New York bank. She has had no contacts with Minnesota. Without her consent or knowledge, Zimmerman Reed included her as a class member in this suit.

After a time, Zimmerman Reed entered into a settlement with defendants and gave notice to the class. Petitioner duly filed an objection to the settlement on the grounds that it gave exorbitant fees of $250,000 to the class action attorneys but provided little or nothing of value to the class members.

The Honorable Marilyn Justman approved the settlement in an order of February 7, 1996. Judgment was entered on February 27.

From March 6, 1996, Petitioner sought to appeal and served Zimmerman Reed with a copy of a notice of appeal from the February 7 order, which Zimmerman Reed had provided her. When the District Court notified petitioner that her appeal filed there could not be accepted without a cost bond, or waiver thereof, she obtained the waiver and filed it with that court.

Despite its knowledge of her intentions, and despite several communications by petitioner to attorneys in the firm, Zimmerman Reed failed at any time to provide its client with a copy of the judgment - or even to tell her of its existence - and failed to inform her of the requirements for filing appeals in Minnesota. She eventually was compelled to contact and obtain a copy of the judgment from Judge Justman. By the time petitioner was able to file the proper appeal papers with the Court of Appeals, more than 90 days had elapsed from the entry of the judgment.

Petitioner's efforts to perfect her appeal, her communications with the Clerk of Appellate Courts and the Hennepin County District Court, her attempts to obtain appropriate documents from Zimmerman Reed, and the less-than-forthcoming responses from the firm are set forth in detail in the attached affidavit of Stanley Futterman.

On September 24, 1996, the Court of Appeals denied petitioner's motion to accept her appeal.

4. Argument in support of petition.

A. Justice requires allowing this appeal.

In the interests of justice this Court may exercise its discretion to hear appeals not filed in a timely manner. *Krug v. Independent School District No. 16*, 293 N.W.2d 26, 29 (Minn. 1980); *State v. M.A.P.*, 281 N.W.2d 334, 336-37 (Minn. 1979).

Justice requires acceptance of petitioner's appeal. Petitioner is not a resident of Minnesota and did not volunteer to be part of this suit. She could not reasonably be expected to be an expert in Minnesota appellate procedures. Still, as shown in the affidavit of Mr. Futterman, petitioner diligently attempted to perfect and file an appeal from the District Court's judgment. Her failure to do so was due entirely to the refusal of Zimmerman Reed, her ostensible attorneys, to cooperate and assist her in any way or even to inform her of the requirements for filing appeals and provide her with a copy of the judgment.

As illustrated by this case, class action cases carry the potential of becoming vehicles for settlements enriching the attorneys purportedly representing the plaintiff class at the expense of the plaintiffs themselves. The interests of the attorneys become adversarial to clients who wish to exercise their rights to appeal from orders approving such settlements.

Because of the failure of the class action attorneys to adequately protect petitioner's right to appeal, and the need to establish a precedent so that other class action attorneys will not engage in similar practices in the future, the interests of justice require acceptance of petitioner's appeal.

B. Respondents should be estopped from contesting the petition.

Knowing of petitioner's intention to appeal their settlement, petitioner's own attorneys failed to supply her with a copy of the judgment or notify her of the requirements for filing an appeal in Minnesota courts. Whether their conduct was deliberate or negligent, the effect was to protect a settlement favorable to the attorneys at the expense of a disapproving client.

Petitioner relied upon the attorneys purporting to represent her. It would be unconscionable to allow these attorneys to harm their client by taking advantage of their failure to provide necessary documents and failure to notify her of her rights and responsibilities for filing an appeal. They should be estopped from objecting to this petition. *Northern Petrochemical Co. v. United States Fire Insurance Co.*, 277 N.W.2d 408 (Minn. 1979).

C. The Fourteenth Amendment Due Process Clause requires acceptance of this appeal.

Class action plaintiffs have a Fourteenth Amendment due process right to "notice. . .to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice should describe the action and the plaintiffs' rights in it." Moreover, the Due Process Clause requires that class action attorneys adequately represent the interests of the absent class members. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950).

Class action plaintiffs' due process guarantees of proper notice must include a right to notification regarding rights to appeal and the court documents parties are required to submit to perfect appeals. The plaintiffs have a right not to be misled by those vested by the court with fiduciary responsibility. Because the class action attorneys did not provide petitioner with the required notice, and instead proffered deceptive responses or nonresponses to her communications, the Fourteenth Amendment mandates acceptance of this appeal.

For these reasons, the petitioner seeks an order directing the Court of Appeals to accept her appeal or, in the alternative, an order granting review of the decision of the Court of Appeals.

Dated: October 23, 1996 /s/ Elliot C. Rothenberg

Elliot C. Rothenberg (#93804)
Attorney for Petitioner
3901 West 25th Street
Minneapolis, MN 55416
(612) 926-8185

File #94-9240

APPENDIX TO PETITION OF LINDA FUTTERMAN

Order of Court of Appeals

Judgment of Hennepin County District Court

Affidavit and exhibits of Stanley Futterman

File #94-9240
STATE OF MINNESOTA

IN COURT OF APPEALS

Andrea T. Nasset, et al.,

Respondents,

Linda Futterman,

Appellant,

vs.

Margaretten & Company, Inc.,
et al.,

Respondents.

ORDER

#C8-96-1847

Considered and decided by Schumacher, Presiding Judge, Parker, Judge, and Short, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS HEREIN, AND FOR THE FOLLOWING REASONS:

Appellant seeks review of a judgment entered February 27, 1996. The time to appeal the judgment expired May 28, 1996, 90 days after judgment was entered. See Minn. R. Civ. App. P. 104.01. Appellant moves for acceptance of appeal papers mailed to this court on July 22, 1996.

This court cannot extend the time to file an appeal. Minn. R. Civ. App. P. 126.02; Township of Honner v. Redwood County, 518 N.W.2d 639 (Minn. App. 1994), review denied (Minn. Sept. 16, 1994). Timely service and filing of the notice of appeal are jurisdictional. Minn. R. Civ. App. P. 103.01, subd. 1. It is undisputed that appellant did not mail any notice of appeal to this court within 90 days after entry of the judgment. Appellant has cited no authority permitting acceptance of the appeal.

IT IS HEREBY ORDERED:

1. Appellant's motion is denied and this appeal is dismissed.
2. The motion for admission pro hac vice of New York counsel is denied as moot.

Dated: September 24, 1996

BY THE COURT

/s/ Robert H. Schumacher
Robert H. Schumacher
Presiding Judge

CLL:mbs

File #94-9240

OFFICE OF
APPELLATE COURTS

SEP 24 1996

FILED

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

JUDGMENT

ANDREA T. AND PETER J. NASSET;
MOLLY K. OLSON; RANDALL C. JOHNSON;
KENNETH AND NANCY FRENCH,
AND ALL OTHERS SIMILARLY SITUATED,
Plaintiffs

DATE: Feb. 27, 1996

vs.

JUDGMENT ROLL

File No. 94-9240

MARGARETTEN & COMPANY, INC.,
CHEMICAL MORTGAGE COMPANY,
Defendants

This cause having been regularly placed upon the calendar of the above named Court, came on for hearing on the 12th day of January, 1996, upon motion of Plaintiffs, and the Court, after hearing the arguments of counsel and being advised in the premises, did, on the 12th day of January, 1996, duly make and file its order granting said motion and for judgment herein, and thereafter, on the 7th day of February, 1996, the court did make and file its amended order for judgment herein.

Now, pursuant to said amended order an on motion of Charles S. Zimmerman, Esq., Attorney for the Plaintiffs,

IT IS HEREBY ADJUDGED:

1. That the action against Chemical was commenced on or about June 21, 1991. The action against Margaretten was

commenced on June 15, 1994. An Amended Complaint is being filed in this action naming Chemical as an additional Defendant following the acquisition of Margaretten by Chemical.

2. That this action may, for settlement purposes, be maintained as a class action with the class consisting of two subclasses: (a) all persons with escrowed mortgage loans being serviced or subserviced by Defendant as of January 1, 1995, and (b) all persons who formerly had escrowed mortgage loans that were serviced or subserviced by defendant or its predecessors for a period of at least twelve (12) consecutive months between January 1, 1981 and December 31, 1994 (the "paid off loan class period"), which loans were paid off, transferred or otherwise removed from Defendant's books and records, or whose escrow accounts were waived by Defendant during the paid off loan class period. For those persons who formerly had escrowed mortgage loans secured by real property located in the State of Ohio, the paid off loan class period is January 1, 1976 to December 31, 1994. Included in the existing mortgagor subclass are those loans as of January 1, 1995, by Bank of America for Margaretten & Company, Inc.

3. That the Plaintiffs as class representatives, fairly and adequately represent the interests of the class, and have no interests antagonistic to the Class.

4. That the notice previously given to class members in this action satisfies the requirements of due process and the requirements of Rule 23 Minnesota Rules of Civil Procedure. Notice of the pendency of the action and of the proposed settlement was mailed and published.

5. That the Settlement Agreement is fair, reasonable and adequate as to each member of the class.

The settlement provides for substantial changes in the method of accounting mortgage escrow impound accounts to be utilized by the Defendant, and substantially reduces the amount of money required to be maintained in mortgage escrow accounts for a substantial proportion of the Class. In similar cases, involving approximately the same number of loans and exactly the same changes in methodology, these changes have resulted in refunds to the Class of $10 Million to $14 Million. In addition to this Refund, the Class will receive $50,000 representing an imputed interest penalty for use of funds allegedly improperly maintained in escrow impound accounts by Defendant. The Court considers these changes in methodology, refunds, and cash payments to the Class to represent fair, reasonable and adequate compensation to the Class in highly disputed litigation.

6. That the positions asserted by the Defendant have received some support from HUD, and from other Courts that have considered the merits of Plaintiffs' claims. It is anything but certain that Plaintiff would prevail on their substantive claims, or even achieve as good a result as the outcome provided for in the settlement, if the case were litigated to a conclusion.

7. That each member of the class is bound by the terms of the Settlement Agreement, including those regarding the ongoing services of their mortgage escrow accounts, and the release and covenant not to sue provided for in the Settlement Agreement between the parties. The Mortgage contract of each member of the class is amended, as provided for in the Settlement Agreement, to expressly include the provisions for ongoing servicing of the mortgage escrow impound account in the manner provided for in the Settlement Agreement.

8. That the comments of those objecting to the settlement have been considered and are found to be lacking merit and do not justify denying approval of this settlement.

9. That as soon as practicable and commercially reasonable, but in all events within one (1) year of the date

when the Order filed on the 7th day of February, 1996, becomes final as set forth in the Settlement Agreement, Defendant shall institute, or to the extent it has already been instituted, continue to use, the methodology for servicing the escrow accounts of the class members set forth in the Settlement Agreement.

10. That Chemical will facilitate redemption and processing of the credits, as set forth in paragraph 10 of the Settlement Agreement, as soon as practicable after the Effective Date of the Settlement Agreement.

11. That within ten (10) days of the date when the Order filed on the 7th day of February, 1996, becomes final as set forth in Paragraph 20 of the Settlement Agreement, Defendant shall pay to Zimmerman Reed as and for attorneys' fees, costs and expenses not to exceed $250,000 from Defendant. All remaining sums to be paid under the terms of the Settlement Agreement shall then be credited or paid to members of the Class, as provided for in the Settlement Agreement and in paragraph 17 herein.

12. That all claims in the litigation against Defendant are dismissed on the merits and with prejudice. Each member of the class is permanently enjoined from bringing, joining or continuing to prosecute against Defendant or any released person or entity as set forth in the Settlement Agreement any claim that was, could have been or may be brought in this action or otherwise for which a release and covenant not to sue is given in the Settlement Agreement. Any party violating the Court's injunction shall be required to pay the costs and attorneys' fees incurred by any released party as a result of a violation of the Court's injunction.

13. That the Court hereby retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement between the parties.

14. That unclaimed funds from the settlement fund will be paid over to the Habitat for Humanity.

15. That no later than April 1, 1997 and on or before April 1st of each of the following four years through the year 2001, Defendant shall file with the Court, and serve on Plaintiffs' counsel, the following information:

a. the total dollar amount of funds refunded to mortgagors for escrow accounts maintained in the previous calendar year; and

b. the total number of discount certificates redeemed pursuant to Paragraph 10 of the Settlement Agreement during the previous calendar year.

16. That within 120 days after the Effective Date of the Settlement Agreement, or as soon thereafter is practicable, Defendant will file with the Court, and serve upon Plaintiffs' counsel, a list of all checks that have been sent to Former Class members and a confirmation that any remaining funds in the rebate pool have been distributed to the charity specified in Paragraph 11 of the Settlement Agreement. Any filings may, at Defendant's option, be done in magnetic tape or other electronic or computer medium or format.

17. That the Findings and Dismissal Order and the Court's Order Awarding Class Counsel Fees and Costs shall be deemed final, in accordance with paragraph 20(a) of the Settlement Agreement, ninety-five (95) days, rather than sixty-five (65) days, after the entry of judgment thereon to reflect the intent of the parties that sufficient time elapse for the filing of any appeals from the Court's orders and/or judgment, including a reasonable time for filing by mail, before the Settlement Agreement shall be deemed "Effective", as provided in paragraph 23 thereof. The remaining provisions of said paragraph 20 of the Settlement Agreement shall remain in full force and effect.

File #94-9240

18. That there being no just reason for delay, judgment be, and hereby is, entered immediately.

BY THE COURT
DISTRICT COURT ADMINISTRATOR

BY /illegible/
Deputy

STATE OF MINNESOTA, COUNTY OF HENNEPIN
I hereby certify this 5 page document to be a true and correct copy of the original on file and of record in my office.
District Court Administrator

By /s/ illegible Deputy

APPELLATE COURT CASE NUMBER
STATE OF MINNESOTA
IN COURT OF APPEALS

Andrea T. and Peter J. Nasset;
Molly K. Olson; Randall C.
Johnson;
Kenneth and Nancy French,
and all others similarly situated,

Plaintiffs-Respondents,

and

Linda Futterman,

Plaintiff Class Member-
Objector-Appellant,

vs.

Margaretten & Company, Inc.
and
Chemical Mortgage Company,

Defendants-Respondents

HENNEPIN COUNTY
CASE NO. 94-9240

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ACCEPTANCE OF APPEAL PAPERS

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

STANLEY FUTTERMAN, being duly sworn, deposes and says:

1. I am an attorney at law in the State of New York, having been admitted to practice before the highest courts of that State on August 25, 1966 by the Second Department and to the bar of the United States Supreme Court in 1977.

2. I represent Objector-Appellant Dr. Linda Futterman. On or about November 10, 1995, Dr. Futterman received by mail at the address we share an undated notice of a hearing, scheduled for January 12, 1996, on a proposed class action settlement (Appellant's Brief and Appendix, submitted herewith ["App."], pp. A1-A4). On December 5, 1995 I submitted on Dr. Futterman's behalf her objections to the proposed settlement (App., pp. A5 - A16). The Objections were sent to the Clerk of the Hennepin County District Court under cover of a letter dated December 5, 1995 which reflected service on Zimmerman Reed, attorneys for the plaintiff class, by overnight express delivery service (Letter, Stanley Futterman to Hennepin County District Court, December 5, 1995, Exhibit A hereto). The letter requested "admission pro hac vice, should such admission be necessary for the purpose of submitting said Objections." (id.)

3. On or about February 8, 1996 I inquired by telephone of the Clerk of the Court as to the status of the matter. In response I received on that day from plaintiff class counsel Barry G. Reed, by fax, a copy of the Court's Amended Findings and Order, approving the settlement, dated the day before (App., pp. A26-31). The Order provided: "THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY." In New York, in the practice I am familiar with, such a direction

would cause the Clerk to endorse the Order and file it as a judgment, without further additions or delay.

4. On March 6, 1996 I accordingly filed a Notice of Appeal from what I termed the "Order and Judgment entered in this action on the 7th day of February, 1996" (App., p. A32). In my cover letter, I certified, as I had with the Objections themselves, that the Notice of Appeal had been served by overnight express delivery service on counsel for the plaintiff class (Letter, Stanley Futterman to Hennepin County District Court, March 6, 1996, Exhibit B hereto).

5. On March 25, 1996, I received a note from the District Court Administration, returning my Notice of Appeal and explaining:

> Before we can file your Notice of Appeal, we will have to have your cost bond or $500.00 check in lieu of cost bond or waiver of cost bond, per Rule 107. Your request for admission pro hac vice has been passed on to Judge Justman. As for your notice of appeal to the Court of Appeal, we will first need your cost bond for $500.00 before we can acknowledge it. We assume that this is not just a letter of exclusion or letter of objection.

(Exhibit C hereto)

6. That same day I responded to the District Court Administrator by letter dated March 25, 1996 requesting that the requirement for the cost bond be waived, and resubmitting the Notice of Appeal (Exhibit D hereto). A copy of the letter was simultaneously served by mail on Zimmerman Reed, as shown by the "cc" at the foot of the letter.

7. By Order dated April 2, 1996 Judge Justman granted the request for waiver of the cost bond requirement (App., p. A35). I assumed at that point that an appeal had been effectively taken, and what remained was only its perfection.

8. In seeking to assemble the proper record I contacted the Zimmerman Reed firm. My telephone calls went unanswered and on June 3, 1996 I received under cover of a letter dated May 28, 1996 only another copy of the Court's Amended Order and Findings (Exhibit E hereto). No copy of the Court's Judgment, which I subsequently learned had been entered on February 27, 1996, as ever served upon me by the attorneys for the plaintiff class.

9. On or about July 22, 1996, as my brief on appeal neared completion, I filed with the Clerk of the Appellate Courts the Notice of Appeal, a copy of the Amended Order and Findings, two copies of the statement of the case, and a check for $15 in filing fees which I understand to be the designated fee under Minnesota Statutes Ch. 357.002 "where the amount described is less than $2,000." (As explained in my letter of March 25, 1996, under the order approving the class action settlement "Dr. Futterman and the class members would be able to realize no more than $25 in cost . . . plus a settlement credit of $125 towards the costs of refinancing or obtaining a new first mortgage loan from Chemical which is, on analysis, worthless" (Ex. D hereto, p. 1). Thus, the value of the settlement to Dr. Futterman would have to be increased 80 fold before it would amount to as much as $2,000).

10. Just prior to sending in the printed brief and appendix, I inquired of the Clerk of the Court to verify that my submission would comply with all rules of the Court. Kim Ghilardi, of the Office of the Clerk, informed me on August 6, 1996 that the appeal papers sent to this court on July 22, 1996 had not been accepted, for reasons explained in a letter from

the Clerk of the Appellate Courts dated August 1, 1996 which I had not yet received by mail but which she kindly faxed to me that day. A hard copy of the letter, postmarked August 5, 1996, arrived on August 12, 1996, returning the papers I had sent on July 22, 1996 (Exhibit F hereto). The letter notes (i) that a motion for my admission pro hac vice must be made by a Minnesota attorney -- Elliot C. Rothenberg, Esq. of the Minnesota bar has since agreed to move my admission and appear as co-counsel; (ii) that a copy of the Judgment had not been included -- it is submitted herewith, as Exhibit G; (iii) that my $15 check was inadequate -- I am herewith submitting a check for the requested $250; (iv) that I had not provided a copy of the order waiving the cost bond -- that is included in the Appendix to Appellant's brief, submitted herewith (App. A. 35); (iv) that I did not provide an affidavit of service of the initial notice of appeal -- that is being submitted simultaneously herewith.

11. Also on August 12, 1996 I received, for the first time, a copy of the Judgment entered February 27, 1996 pursuant to Judge Justman's Order of February 7, 1996, which was also enclosed, contained in an envelope from Judge Justman's chambers postmarked August 9, 1996 (Exhibit G hereto). An amended notice of appeal, specifically taking the appeal from both the Order and Judgment, has accordingly been prepared and will be submitted herewith.

12. In view of the above -- and to provide this Court with an opportunity to review a class action settlement which the appeal papers show, I believe, does little or nothing for members of the class and unduly rewards the class' attorneys with over-rich and unjustified fees -- I respectfully request that the Court accept the appeal papers originally submitted on July 22, 1996, the amended Notice of Appeal and Appellant's Brief and Appendix, all submitted herewith, and deem the Appeal to be taken nunc pro tunc both from the Amended

Order and Findings dated February 7, 1996 and the Judgment entered pursuant thereto on February 27, 1996.

/s/ Stanley Futterman
Stanley Futterman
Attorney for Class Member/Objector-Appellant
Dr. Linda Futterman
655 Third Avenue
New York, New York 10017
(212) 687-3121

Sworn to before me
this 13th day of August, 1996

Notary Public

Milton Springut
025P44991034
Qualified N.Y. County
Expires 1-21-98

EXHIBIT A

Stanley Futterman
Attorney at Law
292 Madison Avenue, 8th Floor
New York, New York 10017
(212) 532-4447
FAX: (212) 481-0543

Direct Dial: (212) 696-0655

December 5, 1995

BY FEDERAL EXPRESS

Hennepin County District Court
Hennepin County Government Center
300 South Sixth Street
Minneapolis, MN 55487
Attention: Clerk of the Court

Re: Nasset et al. v. Margaretten & Co., Inc. et al, 94-9230
(Justman)

To the Honorable Clerk of the Court:

The undersigned attorney, admitted to practice in the courts of the State of New York, the United States Supreme Court, and various inferior federal courts, but not in the courts of the State of Minnesota, respectfully submits the enclosed objection to the proposed settlement in the above-referenced class action ("Objection"), on behalf of Class Member Dr. Linda Futterman, and herewith requests admission pro hac vice, should such admission be necessary for the purpose of submitting said Objection.

A copy of this application and of the accompanying Objection has been served by overnight express delivery service on counsel for plaintiffs and the class at the address provided in the Notice of Hearing on Proposed Settlement of Class Action:

Charles S. Zimmerman
Barry G. Reed
Zimmerman Reed
5200 Norwest Center
99 South Seventh Street
Minneapolis, MN 55402

I will not be able to attend the hearing on January 12, 1996, and therefore respectfully request that the enclosed Objection be submitted to the Hon. Marilyn J. Justman of the Hennepin County District Court or to such other Judge as may be presiding in this matter, and that I be sent a copy of any order issued by the Court prior to, at, or following the said hearing. A stamped self-address envelope is enclosed for that purpose.

Thank you for your courtesy.

Respectfully,

/s/ Stanley Futterman

Stanley Futterman
Attorney for Dr. Linda Futterman
Class Member

Exhibit B

Stanley Futterman
Attorney at Law
292 Madison Avenue, 8th Floor
New York, New York 10017
(212) 696-0655
FAX: (212) 481-0543

March 6, 1996

BY FEDERAL EXPRESS

Hennepin County District Court
Hennepin County Government Center
300 South Sixth Street
Minneapolis, MN 55487
Attention: Clerk of the Court

Re: Nasset et al. v. Margaretten & Co., Inc. et al,
94-9230
(Justman)

To the Honorable Clerk of the Court:

The undersigned attorney, admitted to practice in the courts of the State of New York, the United States Supreme Court, and various inferior federal courts, but not in the courts of the State of Minnesota, respectfully submits on behalf of Class Member/Objector Linda Futterman, the enclosed Notice of Appeal to the Court of Appeals from the Order and Judgment entered in the above-referenced class action on February 7, 1996, and herewith requests admission pro hac vice, should such admission be necessary for the purpose of filing said Notice of Appeal.

A copy of this application and of the accompanying Notice of Appeal has been served by overnight express delivery service on counsel for plaintiffs and the class at the address provided in the Notice of Hearing on Proposed Settlement of Class Action:

Charles S. Zimmerman
Barry G. Reed
Zimmerman Reed
5200 Norwest Center
99 South Seventh Street
Minneapolis, MN 55042 *(+ proofreader mark transposing 0 and 4)*

Respectfully submitted,

/s/ Stanley Futterman

Stanley Futterman
Attorney for Dr. Linda Futterman
Class Member

Exhibit C

Jack M. Provo
District Court
Administrator

DISTRICT COURT ADMINISTRATION
12TH FLOOR COURTS TOWER
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487
Telephone: 348-3164

Re: 94-9240
MESHBESHER, ET AL VS.
MARGARETTEN & CO.

Dear Mr.Futterman:

We are returning your papers for the following reason:
(Make checks payable to:
District Court Administrator)

________ A fee of $____________ is required.___

________ Overpayment of $___________ enclosed.

________ Personal out-of-state checks not accepted, please send Cashier's check or Money Order is U.S. Currency.

________ Pursuant to Rule 104 of the General Rules of Practice, a Certificate of Representation and Parties shall be filed when filing a Civil case.

________ The Note of Issue/Readiness for Trial is not required under the General Rules of Practice.

________ Papers not venued for Hennepin County.

________ Affidavit of Identification of judgment debtor required.

________ Affidavit of Identification of judgment creditor and judgment debtor required under Uniform Enforcement of Foreign Judgments Act.

________ We are unable to find any record of this case.

________ Pursuant to R.C.P. 5.04, NO discovery documents shall be filed unless ordered by the Court.

________ The return on the execution can be used by the attorney to Partially Satisfy or Fully Satisfy the judgment. Pursuant to M.S.A. 551.04, Subd. 6, no more than $5,000 may be recovered in an execution.

XX Please return this cover letter with your reply.

XX Other: BEFORE WE CAN FILE YOUR NOTICE OF APPEAL, WE WILL HAVE TO HAVE YOUR COST BOND OR $500.00 CHECK IN LIEU OF COST BOND OR WAIVER OF COST BOND, PER RULE 107. Your request for admission pro hac vice has been passed on to Judge Justman. As for your notice of appeal to the Court of Appeals, we will first need your cost bond for $500.00 before we can acknowledge it. We assume that this is not just a letter of exclusion or letter of objection.

Ex. A /s/ W. Oyler
W. OYLER, APPEALS DESK 3-21-96

STATE OF MINNESOTA DISTRICT COURT
HENNEPIN COUNTY FOURTH JUDICIAL DISTRICT

Case No. 94-9230

Andrea T. and Peter J. Nasset;)
Molly K. Olson; Randall C.)
Johnson;)
Kenneth and Nancy French,)
and all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
Margaretten & Company, Inc.,)
Chemical Mortgage Company,)
)
Defendants.)

NOTICE OF APPEAL

Notice is hereby given that class member/objector Linda Futterman hereby appeals to the Court of Appeals from the Order and Judgment entered in this action on the 7th day of February, 1996.

Respectfully submitted,

/s/ Stanley Futterman
Stanley Futterman
Attorney for Class Member/Objector
Dr. Linda Futterman
292 Madison Avenue
New York, New York 10017
(212) 696-0655

Dated:

New York, New York
March 6, 1996

cc: Charles S. Zimmerman
Barry G. Reed
Zimmerman Reed
5200 Norwest Center
99 South Seventh Street
Minneapolis, MN 55402

Exhibit D

Stanley Futterman
Attorney at Law
292 Madison Avenue, 8th Floor
New York, New York 10017
(212) 696-0655
FAX: (212) 481-0543

March 25, 1996

Mr. Jack M. Provo
District Court Administrator
12th Floor, Courts Tower
Hennepin County Government Center
Minneapolis, Minnesota 55487

Re: Nasset v. Margaretten & Co. 94-9240

Dear Mr. Provo,

I have a letter from W. Wyler of the Appeals Desk of your office, dated 3-21-96, received today, returning Class Member/Objector Dr. Linda Futterman's Notice of Appeal in the above-referenced case and stating "we will first need your cost bond for $500.00 before we can acknowledge it." (Exhibit A annexed hereto).

The said letter further states that the requirement of a cost bond or $500 check in lieu of bond may be waived per Rule 107. I hereby apply, as attorney for Dr. Futterman, for waiver of the cost bond under Rule 107, and request that this letter be referred to a Judge who may consider the application.

Under the order approving the class action settlement from which an appeal has been taken, Dr. Futterman and other class members would be able to realize no more than $25 in cash (Objection of Class Member Linda Futterman to Proposed Settlement, Exhibit B hereto, ¶3), plus a settlement credit of $125 towards the costs of refinancing or obtaining a new first mortgage loan from Chemical which is, on analysis, worthless (id. p. 7).

Should the appeal ultimately result in an improvement in the value of the settlement to the class members of twenty (20) orders of magnitude, Dr. Futterman's increased share (20 x $25) would only then just cover the amount of the appeal bond. Purchase of the bond would obviously, therefore, be cost-ineffective.

In class action cases of this sort, involving settlements, at best, of relatively low value to each individual class member, the requirement of a $500 appeal bond, or of a check in that amount, can serve only to block any appeal by a dissatisfied class member. The requirement should therefore, it is respectfully submitted, be waived in the interest of permitting appellate review.

I am re-enclosing the Notice of Appeal originally served and submitted March 6, 1996 (Exhibit C annexed hereto), with the request that it be acknowledged and filed nunc pro tunc.

Respectfully submitted,

/s/ Stanley Futterman

Stanley Futterman
Attorney for Class Member/Objector
Appellant Dr. Linda Futterman

cc: Zimmerman & Reed
Attorneys for the Class

Exhibit E

ZIMMERMAN • REED

ATTORNEYS • AT • LAW

5200
NORWEST CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS
MINNESOTA 55402-4123
612 / 341 • 0400
fax 612 / 341 • 0844
800 / 755 • 0098

ARIZONA OF COUNSEL

BRANDES, LANE & JOFFE P.C.
FIFTH FLOOR
2020 NORTH CENTRAL AVENUE
PHOENIX, ARIZONA 85004
802 / 258 • 6000
FAX 802 / 258 • 6003

RECEIVED
JUN 03 1996

BARRY G. REED
Reply to Minneapolis
Voice Mail (612) 334-7020

May 28, 1996

Stanley Futterman
292 Madison Avenue, 8th Floor
New York, New York 10017

RE: French vs. Chemical Mortgage Company
Nasset v. Margaretten
Court File No. 94-9240
Notice of Filing

Dear Mr. Futterman:

Enclosed please find served upon you by United States mail, the Court's Amended Order and Findings in the above captioned matter.

Very truly yours,

ZIMMERMAN REED, P.L.L.P.

/s/ Barry G. Reed

Barry G. Reed

BGR:cla
Enclosures

cc: Alan Maclin

I:\wpdata\cla\mortgage\letters\chem

ZIMMERMAN•REED

ATTORNEYS•AT•LAW

5 2 0 0
NORWEST CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS
MINNESOTA 55402-4123

MINNEAPOLIS
May 28'96
MN

~0.55~
U.S. POSTAGE

PB METER
7008736

Stanley Futterman, Esq.
292 Madison Avenue, 8th Floor
New York, New York 10017

STATE OF MINNESOTA DISTRICT COURT

HENNEPIN COUNTY FOURTH JUDICIAL DISTRICT

Andrea T. and Peter J. Nasset;) Case No. 94-9230
Molly K. Olson; Randall C.)
Johnson;)
Kenneth and Nancy French,)
and all others similarly situated,) **AMENDED FINDINGS**
) **AND ORDER**
Plaintiffs,)
)
v.)
)
Margaretten & Company, Inc.,) RECEIVED
Chemical Mortgage Company,) JUN 03 1996
)
Defendants.)

This matter came on for hearing before the undersigned on Friday, January 12, 1996 on the motion of Plaintiff for final approval of the class action settlement entered into between the parties to the action. Defendant appeared in support of said motion.

The Plaintiff class was represented by Charles S. Zimmerman and Barry G. Reed of the law firm Zimmerman Reed, 5200 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402. Defendants were represented by Robert J. Pratte and Alan H. Maclin, Briggs and Morgan, 2400 IDS Center, Minneapolis, Minnesota 55402. The issues with respect to the fairness of the proposed settlement and the attorneys' fees and costs sought by Plaintiffs' counsel were briefed and argued. Based upon such briefs and arguments, and upon the other files and records in this matter, the Court finds and orders as follows:

1. The action against Chemical was commenced on or about June 21, 1991. The action against Margaretten was commenced on June 15, 1994. An Amended Complaint is being filed in this action naming Chemical as an additional Defendant following the acquisition of Margaretten by Chemical.

2. This action may, for settlement purposes, be maintained as a class action with the class consisting of two subclasses: (a) all persons with escrowed mortgage loans being serviced or subserviced by Defendant as of January 1, 1995, and (b) all persons who formerly had escrowed mortgage loans that were serviced or subserviced by defendant or its predecessors for a period of at least twelve (12) consecutive months between January 1, 1981 and December 31, 1994 (the "paid off loan class period"), which loans were paid off, transferred or otherwise removed from Defendant's books and records, or whose escrow accounts were waived by Defendant during the paid off loan class period. For those persons who formerly had escrowed mortgage loans secured by real property located in the State of Ohio, the paid off loan class period is January 1, 1976 to December 31, 1994. Included in the existing mortgagor subclass are those loans as of January 1, 1995, by Bank of America for Margaretten & Company, Inc.

3. The Plaintiffs as class representatives, fairly and adequately represent the interests of the class and have no interests antagonistic to the Class.

4. The notice previously given to class members in this action satisfies the requirements of due process and the requirements of Rule 23 Minnesota Rules of Civil Procedure.

Notice of the pendency of the action and of the proposed settlement was mailed and published.

5. The Settlement Agreement is fair, reasonable and adequate as to each member of the class.

The settlement provides for substantial changes in the method of accounting mortgage escrow impound accounts to be utilized by the Defendant, and substantially reduces the amount of money required to be maintained in mortgage escrow accounts for a substantial proportion of the Class. In similar cases, involving approximately the same number of loans and exactly the same changes in methodology, these changes have resulted in refunds to the Class of $10 Million to $14 Million. In addition to this Refund, the Class will receive $50,000 representing an imputed interest penalty for use of funds allegedly improperly maintained in escrow impound accounts by Defendant. The Court considers these changes in methodology, refunds and cash payments to the Class to represent fair, reasonable and adequate compensation to the Class in highly disputed litigation.

6. The positions asserted by the Defendant have received some support from HUD, and from other courts that have considered the merits of Plaintiffs' claims. It is anything but certain that Plaintiff would prevail on their substantive claims, or even achieve as good a result as the outcome provided for in the settlement, if the case were litigated to a conclusion.

7. Each member of the class is bound by the terms of the Settlement Agreement, including those regarding the ongoing servicing of their mortgage escrow accounts, and the release and covenant not to sue provided for in the Settlement Agreement between the parties. The mortgage contract of each member of the class is amended, as provided for in the Settlement Agreement, to expressly include the provisions for

ongoing servicing of the mortgage escrow impound account in the manner provided for in the Settlement Agreement.

8. The comments of those objecting to the settlement have been considered and are found to be lacking merit and do not justify denying approval of this settlement.

9. As soon as practicable and commercially reasonable, but in all events within one (1) year of the date when this Order becomes final as set forth in the Settlement Agreement, Defendant shall institute, or to the extent it has already been instituted, continue to use, the methodology for servicing the escrow accounts of the class members set forth in the Settlement Agreement.

10. Chemical will facilitate redemption and processing of the credits, as set forth in paragraph 10 of the Settlement Agreement, as soon as practicable after the Effective Date of the Settlement Agreement.

11. Within ten (10) days of the date when this Order becomes final as set forth in Paragraph 20 of the Settlement Agreement, Defendant shall pay to Zimmerman Reed as and for attorney's fees, costs and expenses not to exceed $250,000 from Defendant. All remaining sums to be paid under the terms of the Settlement Agreement shall then be credited or paid to members of the Class, as provided for in the Settlement Agreement and in paragraph 17 herein.

12. All claims in the litigation against Defendant are dismissed on the merits and with prejudice. Each member of the class is permanently enjoined from bringing, joining or continuing to prosecute against Defendant or any released person or entity as set forth in the Settlement Agreement any claim that was, could have been or may be brought in this action or otherwise for which a release and covenant not to sue is given in the Settlement Agreement. Any party violating the Courts' injunction shall be required to pay the costs and

attorneys' fees incurred by any released party as a result of a violation of the Court's injunction.

13. The Court hereby retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement between the parties.

14. Unclaimed funds from the settlement fund will be paid over to the Habitat for Humanity.

15. No later than April 1, 1997 and on or before April 1st of each of the following four years through the year 2001, Defendant shall file with the Court, and serve on the Plaintiffs' counsel, the following information:

a. the total dollar amount of funds refunded to mortgagors for escrow accounts maintained in the previous calendar year; and

b. the total number of discount certificates redeemed pursuant to Paragraph 10 of the Settlement Agreement during the previous calendar year.

16. Within 120 days after the Effective Date of the Settlement Agreement, or as soon thereafter as practicable, Defendant will file with the Court, and serve upon Plaintiffs' counsel, a list of all checks that have been sent to Former Class members and a confirmation that any remaining funds in the rebate pool have been distributed to the charity specified in Paragraph 11 of the Settlement Agreement. Any filings may, at Defendant's option, be done in magnetic tape or other electronic or computer medium or format.

17. The Findings and Dismissal Order and the Court's Order Awarding Class Counsel Fees and Costs shall be deemed final, in accordance with paragraph 20(a) of the Settlement Agreement ninety-five (95) days, rather than sixty-five (65) days, after the entry of judgment thereon to reflect the intent of the parties that sufficient time elapse for the filing of any appeals from the Court's orders and/or judgment, including a reasonable time for filing by mail, before the Settlement Agreement shall be deemed "Effective", as provided in paragraph 23 thereof. The remaining provisions of said paragraph 20 of the Settlement Agreement shall remain in full force and effect.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.

Dated: *February 7, 1996*

/s/ Marilyn J. Justman
Judge Marilyn J. Justman
Hennepin County District
Court Judge

Exhibit F

OFFICE OF THE CLERK
MINNESOTA APPELLATE COURTS
25 CONSTITUTION AVENUE
ST. PAUL, MINNESOTA 55155
(612) 296-2581

August 1, 1996

Stanley Futterman
292 Madison Avenue
 Eighth Floor
New York, New York 10017

Re: Nasset v. Margaretten & Co.

Dear Mr. Futterman:

We have received your notice of appeal, statement of the case, check for $15, cover letter, and copy of an "amended findings and order" dated February 7, 1996. We cannot accept your appeal papers.

First, our records indicate that you are not licensed to practice law in Minnesota. Your papers indicate that you will be a member of the New York bar, effective August 25, 1996, but our records indicate that you are not authorized to represent others in the courts of this state. A motion for admission pro hac vice must (a) be made by a Minnesota attorney on your behalf, (b) state that you are a member in good standing of the bar in another jurisdiction, and (c) establish that the foreign jurisdiction would admit Minnesota attorneys under similar circumstances. See Minn. Stat. § 481.02, subd. 6 (1994). No such motion was included with your papers.

You indicated that you are appealing from an order and judgment entered on February 7, 1996. You did not provide a copy of any judgment. The February 7 order directs the entry of judgment, and it is not appealable. Our records show that other parties to this case attempted to appeal from the same order on May 6, 1996 (case number C4-96-923), and this court questioned jurisdiction, because the order was not appealable and there was no indication that judgment had actually been entered. The appellants in that case voluntarily dismissed the appeal. If you are appealing from a judgment entered on February 7, the appeal is untimely. See Minn. R. Civ. App. P. 104.01 (appeal from a judgment must be served and filed within 90 days after entry).

You included a check for $15. The fee for filing an appeal in this court is $250. See Minn. R. Civ. App. P. 103.01, subd. 1(4). Minn. Stat. § 357.022 (1994) applies to filings in the district courts, and it does not affect the filing fee for appeals. If a party is indigent, as that term is defined by statute, the trial judge has authority to waive the filing fee on appeal. See Minn. R. Civ. App. P. 103.01, subd. 3(d); see also Minn. Stat. § 563.01 (1994 & Supp. 1995). You indicate that the district court issued an order waiving the cost bond, but you failed to provide a copy of that order. We are unable to determine whether the district court also waived the filing fee for appeal.

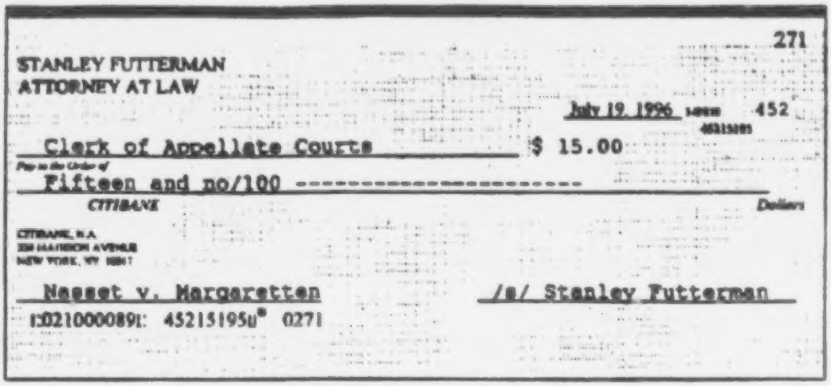
In your statement of the case, you indicate that "written notice of appeal was served on March 6, 1996." Service and filing of the notice of appeal is necessary to perfect an appeal in this court. See generally, Minn. R. Civ. App. P. 103.01, subd. 1. You must file proof of service with the initial appeal papers. Id., subd. 1(a), (b). You did not provide affidavits of service.

We are unable to determine whether the time has elapsed or whether you are still able to perfect a timely appeal. If you have any questions about the information contained in this letter, you may contact our office at (612) 296-2581 or the staff attorneys for the court at (612) 297-1020. We will take no further action on these papers.

Very truly yours,

Clerk of the Appellate Courts

Enclosures



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STANLEY FUTTERMAN
ATTORNEY AT LAW

July 19 1996 [illegible] 452

Pay to the Order of Clerk of Appellate Courts $ 15.00

Fifteen and no/100 ---------------------- Dollars

CITIBANK

CITIBANK, N.A.
[illegible] MADISON AVENUE
NEW YORK, NY [illegible]

Nasset v. Margaretten

/s/ Stanley Futterman

⑆021000089⑆ 45215195⑈ 0271

Stanley Futterman
Attorney at Law
292 Madison Avenue, 8th Floor
New York, New York 10017
Tel: (212) 696-0655
Fax: (212) 481-0543

OFFICE OF
APPELLATE COURTS

JUL 25 1996

FILED
*[date stamp has
a large "X"
over it]*

July 22, 1996

Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: Nasset v. Margaretten & Co. 94-9240.

Dear Court Administrator:

Pursuant to Rule 103.01, Appellant submits for filing the following:

1. the notice of appeal;

2. a copy of the order from which the appeal is taken;

3. two copies of the statement of the case; and

4. a check for $15.00 for the filing fees associated with my client's appeal in the above cited matter. I submit this amount pursuant to Minnesota Statutes Chapter 357.022 which provides that "(t)he court administrator in every county shall charge and collect a filing fee of $15 where the amount demanded is less that $2,000. . ."

Respectfully submitted,

/s/ Stanley Futterman

Stanley Futterman
Attorney for Class Member/Objector
Appellant Dr. Linda Futterman

STATE OF MINNESOTA
HENNEPIN COUNTY

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Andrea T. and Peter J. Nasset;)
Molly K. Olson; Randall C. Johnson;)
Kenneth and Nancy French,)
and all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
)
Margaretten & Company, Inc.,)
Chemical Mortgage Company,)
)
Defendants.)

94-9240
Case No. ~~94-9230~~

NOTICE OF APPEAL

Notice is hereby given that class member/objector Linda Futterman hereby appeals to the Court of Appeals from the Order and Judgment entered in this action on the 7th day of February, 1996.

Respectfully submitted,

/s/ Stanley Futterman
Stanley Futterman
Attorney for Class Member/Objector
Dr. Linda Futterman
292 Madison Avenue
New York, New York 10017
(212) 696-0655

Dated:

New York, New York
March 6, 1996

cc: Charles S. Zimmerman
Barry G. Reed
Zimmerman Reed
5200 Norwest Center
99 South Seventh Street
Minneapolis, MN 55402

EX C

STATE OF MINNESOTA DISTRICT COURT

HENNEPIN COUNTY FOURTH JUDICIAL DISTRICT

Andrea T. and Peter J. Nasset;) Case No. 94-9240
Molly K. Olson; Randall C.)
Johnson;)
Kenneth and Nancy French,)
and all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
Margaretten & Company, Inc.,)
Chemical Mortgage Company,)
)
Defendants.)

AMENDED FINDINGS AND ORDER

This matter came on for hearing before the undersigned on Friday, January 12, 1996 on the motion of Plaintiff for final approval of the class action settlement entered into between the parties to the action. Defendant appeared in support of said motion.

The Plaintiff class was represented by Charles S. Zimmerman and Barry G. Reed of the law firm Zimmerman Reed, 5200 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402. Defendants were represented by Robert J. Pratte and Alan H. Maclin, Briggs and Morgan, 2400 IDS Center, Minneapolis, Minnesota 55402. The issues with respect to the fairness of the proposed settlement and the attorneys' fees and costs sought by Plaintiffs' counsel were briefed and argued. Based upon such briefs and arguments, and upon the other files and records in this matter, the Court finds and orders as follows:

1. The action against Chemical was commenced on or about June 21, 1991. The action against Margaretten was commenced on June 15, 1994. An Amended Complaint is being filed in this action naming Chemical as an additional Defendant following the acquisition of Margaretten by Chemical.

2. This action may, for settlement purposes, be maintained as a class action with the class consisting of two subclasses: (a) all persons with escrowed mortgage loans being serviced or subserviced by Defendant as of January 1, 1995, and (b) all persons who formerly had escrowed mortgage loans that were serviced or subserviced by defendant or its predecessors for a period of at least twelve (12) consecutive months between January 1, 1981 and December 31, 1994 (the "paid off loan class period"), which loans were paid off, transferred or otherwise removed from Defendant's books and records, or whose escrow accounts were waived by Defendant during the paid off loan class period. For those persons who formerly had escrowed mortgage loans secured by real property located in the State of Ohio, the paid off loan class period is January 1, 1976 to December 31, 1994. Included in the existing mortgagor subclass are those loans as of January 1, 1995, by Bank of America for Margaretten & Company, Inc.

3. The Plaintiffs as class representatives, fairly and adequately represent the interests of the class and have no interests antagonistic to the Class.

4. The notice previously given to class members in this action satisfies the requirements of due process and the requirements of Rule 23 Minnesota Rules of Civil Procedure.

Notice of the pendency of the action and of the proposed settlement was mailed and published.

5. The Settlement Agreement is fair, reasonable and adequate as to each member of the class.

The settlement provides for substantial changes in the method of accounting mortgage escrow impound accounts to be utilized by the Defendant, and substantially reduces the amount of money required to be maintained in mortgage escrow accounts for a substantial proportion of the Class. In similar cases, involving approximately the same number of loans and exactly the same changes in methodology, these changes have resulted in refunds to the Class of $10 Million to $14 Million. In addition to this Refund, the Class will receive $50,000 representing an imputed interest penalty for use of funds allegedly improperly maintained in escrow impound accounts by Defendant. The Court considers these changes in methodology, refunds and cash payments to the Class to represent fair, reasonable and adequate compensation to the Class in highly disputed litigation.

6. The positions asserted by the Defendant have received some support from HUD, and from other courts that have considered the merits of Plaintiffs' claims. It is anything but certain that Plaintiff would prevail on their substantive claims, or even achieve as good a result as the outcome provided for in the settlement, if the case were litigated to a conclusion.

7. Each member of the class is bound by the terms of the Settlement Agreement, including those regarding the ongoing servicing of their mortgage escrow accounts, and the release and covenant not to sue provided for in the Settlement Agreement between the parties. The mortgage contract of each member of the class is amended, as provided for in the Settlement Agreement, to expressly include the provisions for

ongoing servicing of the mortgage escrow impound account in the manner provided for in the Settlement Agreement.

8. The comments of those objecting to the settlement have been considered and are found to be lacking merit and do not justify denying approval of this settlement.

9. As soon as practicable and commercially reasonable, but in all events within one (1) year of the date when this Order becomes final as set forth in the Settlement Agreement, Defendant shall institute, or to the extent it has already been instituted, continue to use, the methodology for servicing the escrow accounts of the class members set forth in the Settlement Agreement.

10. Chemical will facilitate redemption and processing of the credits, as set forth in paragraph 10 of the Settlement Agreement, as soon as practicable after the Effective Date of the Settlement Agreement.

11. Within ten (10) days of the date when this Order becomes final as set forth in Paragraph 20 of the Settlement Agreement, Defendant shall pay to Zimmerman Reed as and for attorney's fees, costs and expenses not to exceed $250,000 from Defendant. All remaining sums to be paid under the terms of the Settlement Agreement shall then be credited or paid to members of the Class, as provided for in the Settlement Agreement and in paragraph 17 herein.

12. All claims in the litigation against Defendant are dismissed on the merits and with prejudice. Each member of the class is permanently enjoined from bringing, joining or continuing to prosecute against Defendant or any released person or entity as set forth in the Settlement Agreement any claim that was, could have been or may be brought in this action or otherwise for which a release and covenant not to sue is given in the Settlement Agreement. Any party violating the Courts' injunction shall be required to pay the costs and

attorneys' fees incurred by any released party as a result of a violation of the Court's injunction.

13. The Court hereby retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement between the parties.

14. Unclaimed funds from the settlement fund will be paid over to the Habitat for Humanity.

15. No later than April 1, 1997 and on or before April 1st of each of the following four years through the year 2001, Defendant shall file with the Court, and serve on the Plaintiffs' counsel, the following information:

a. the total dollar amount of funds refunded to mortgagors for escrow accounts maintained in the previous calendar year; and

b. the total number of discount certificates redeemed pursuant to Paragraph 10 of the Settlement Agreement during the previous calendar year.

16. Within 120 days after the Effective Date of the Settlement Agreement, or as soon thereafter as practicable, Defendant will file with the Court, and serve upon Plaintiffs' counsel, a list of all checks that have been sent to Former Class members and a confirmation that any remaining funds in the rebate pool have been distributed to the charity specified in Paragraph 11 of the Settlement Agreement. Any filings may, at Defendant's option, be done in magnetic tape or other electronic or computer medium or format.

17. The Findings and Dismissal Order and the Court's Order Awarding Class Counsel Fees and Costs shall be deemed final, in accordance with paragraph 20(a) of the Settlement Agreement ninety-five (95) days, rather than sixty-five (65) days, after the entry of judgment thereon to reflect the intent of the parties that sufficient time elapse for the filing of any appeals from the Court's orders and/or judgment, including a reasonable time for filing by mail, before the Settlement Agreement shall be deemed "Effective", as provided in paragraph 23 thereof. The remaining provisions of said paragraph 20 of the Settlement Agreement shall remain in full force and effect.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.

Dated: *February 7, 1996*

/s/ Marilyn J. Justman
Judge Marilyn J. Justman
Hennepin County District
Court Judge

STATE OF MINNESOTA

IN COURT OF APPEALS

Andrea T. and Peter J. Nasset;) Molly K. Olson; Randall C.) Johnson;) Kenneth and Nancy French,) and all others similarly situated,)) Plaintiffs,)) v.)) Margaretten & Company, Inc.,) Chemical Mortgage Company,)) Defendants.))	STATEMENT OF THE CASE OF APPELLANT TRIAL COURT CASE NUMBER: 94-9240 APPELLATE COURT CASE NUMBER:

Objector-Appellant Linda Futterman, pursuant to Rule 133.03, hereby submits this Statement of the Case of Appellant.

1. This case originated in the Hennepin County District Court, Fourth Judicial District in the State of Minnesota, before Honorable Judge Marilyn J. Justman.

2. This appeal is taken from a court order dated February 7, 1996. Written Notice of Appeal was served on March 6, 1996. Clause (e) of RCAP 103.03 authorized this appeal.

3. Type of litigation: Class Action settlement.

4. This litigation involved a class of persons who had or have escrowed mortgage loans with the Bank Defendants.

Plaintiffs charge that the Defendants have used accounting methods that have resulted in excess funds held in mortgage escrow accounts, in violation of the mortgage contracts and various consumer protection laws. Defendants have denied all claims. On November 10, 1995, Appellant Dr. Linda Futterman received an undated notice of a hearing, scheduled for January 12, 1996, on a proposed settlement of the action. Appellant submitted written objection to the proposed settlement on two grounds: first, because the notice for the hearing provided insufficient disclosure and established unreasonable barriers to the presentation of objections; and second, because the proposed settlement itself provided for inadequate and deficient remedies to the members of the class, as well as an exorbitant attorney award. By an Amended Findings and Order, dated February 7, 1996, Hon. Marilyn J. Justman, Hennepin County District Court Judge, approved the Settlement Agreement as "fair, reasonable and adequate as to each member of the class," and found the comments of those objecting to the settlement "to be lacking merit." By order, dated April 2, 1996, Judge Justman granted Objector Futterman's request for waiver of the requirement of a cost bond.

5. The issues proposed to be raised on appeal concern the fairness of the ordered settlement including the attorneys' fees provision. As Appellant will show in her brief, only the attorneys and the banks will benefit from this settlement, as the settlement's provision for the class members are illusory.

6. No transcript is required.

7. Oral argument is not requested.

8. Formal briefs are necessary.

9. The names, addresses, zip codes and telephone number of the attorneys for appellant and respondents are as follows:

Attorney for Appellant:
Stanley Futterman
Attorney at Law
292 Madison Avenue, 8th Floor
New York, New York 10017
(212) 532-4447

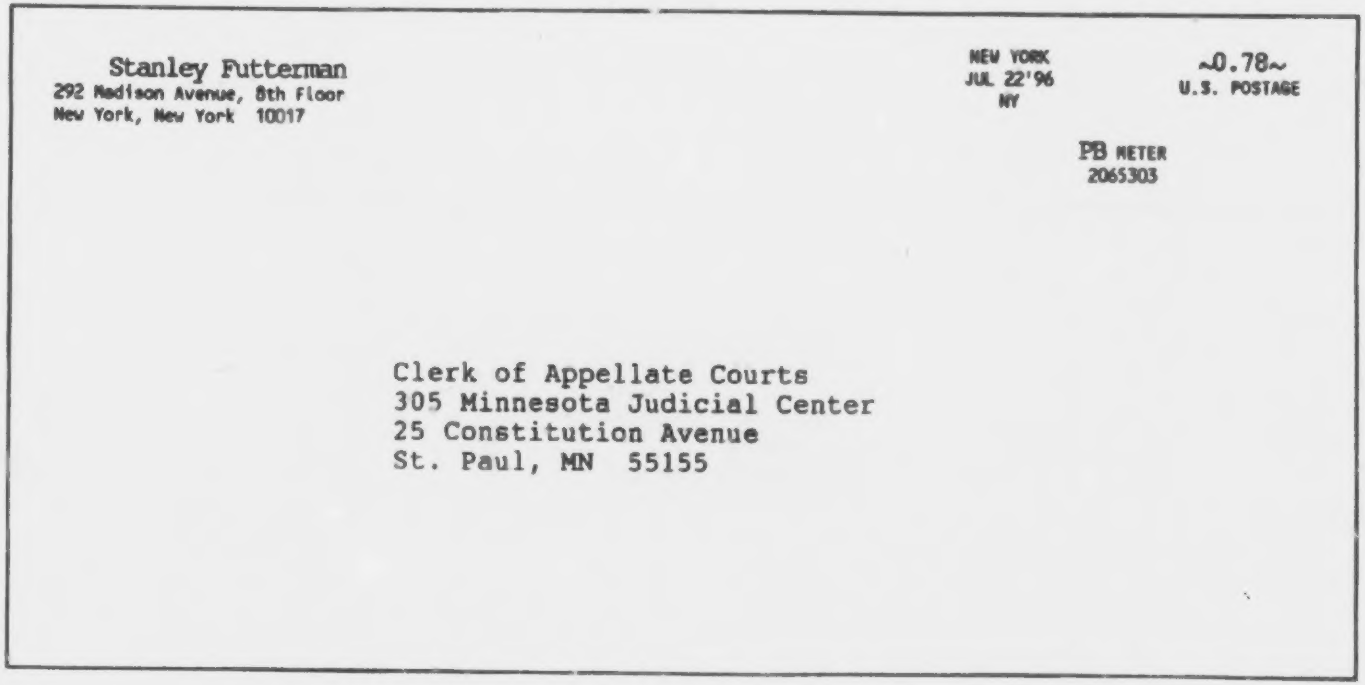
Attorney for Respondent Nasset et al. (Plaintiffs and class):
Charles S. Zimmerman
Barry G. Reed
Zimmerman Reed
5200 Norwest Center
99 South Seventh Street
Minneapolis, MN 55042
(612) 341-0400

Attorney for Respondents Margaretten & Company, et al.(Defendants):
Robert J. Pratte
Alan H. Maclin
Briggs and Morgan
2400 IDS Center
Minneapolis, Minnesota 55402
612) 334-8400

DATED: July 22, 1996.

Stanley Futterman
292 Madison Avenue, 8th Floor
New York, New York 10017
(212) 532-4447
Appearing Pro Hoc Vice (Member of
New York Bar since August 25, 1996)

Stanley Futterman
Attorney for Appellant,
Dr. Linda Futterman



Stanley Futterman
292 Madison Avenue, 8th Floor
New York, New York 10017

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NY

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Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Clerk of Appellate
Courts
25 CONSTITUTION AVENUE
SAINT PAUL, MINNESOTA 55155

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MN

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Stanley Futterman
292 Madison Avenue
Eighth Floor
New York, New York
10017

Exhibit G

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

JUDGMENT

ANDREA T. AND PETER J. NASSET;
MOLLY K. OLSON; RANDALL C. JOHNSON;
KENNETH AND NANCY FRENCH,
AND ALL OTHERS SIMILARLY SITUATED,
Plaintiffs

DATE: Feb. 27, 1996

vs.

JUDGMENT ROLL

File No. 94-9240

MARGARETTEN & COMPANY, INC.,
CHEMICAL MORTGAGE COMPANY,
Defendants

This cause having been regularly placed upon the calendar of the above named Court, came on for hearing on the 12th day of January, 1996, upon motion of Plaintiffs, and the Court, after hearing the arguments of counsel and being advised in the premises, did, on the 12th day of January, 1996, duly make and file its order granting said motion and for judgment herein, and thereafter, on the 7th day of February, 1996, the court did make and file its amended order for judgment herein.

Now, pursuant to said amended order an on motion of Charles S. Zimmerman, Esq., Attorney for the Plaintiffs,

IT IS HEREBY ADJUDGED:

1. That the action against Chemical was commenced on or about June 21, 1991. The action against Margaretten was

commenced on June 15, 1994. An Amended Complaint is being filed in this action naming Chemical as an additional Defendant following the acquisition of Margaretten by Chemical.

2. That this action may, for settlement purposes, be maintained as a class action with the class consisting of two subclasses: (a) all persons with escrowed mortgage loans being serviced or subserviced by Defendant as of January 1, 1995, and (b) all persons who formerly had escrowed mortgage loans that were serviced or subserviced by defendant or its predecessors for a period of at least twelve (12) consecutive months between January 1, 1981 and December 31, 1994 (the "paid off loan class period"), which loans were paid off, transferred or otherwise removed from Defendant's books and records, or whose escrow accounts were waived by Defendant during the paid off loan class period. For those persons who formerly had escrowed mortgage loans secured by real property located in the State of Ohio, the paid off loan class period is January 1, 1976 to December 31, 1994. Included in the existing mortgagor subclass are those loans as of January 1, 1995, by Bank of America for Margaretten & Company, Inc.

3. That the Plaintiffs as class representatives, fairly and adequately represent the interests of the class, and have no interests antagonistic to the Class.

4. That the notice previously given to class members in this action satisfies the requirements of due process and the requirements of Rule 23 Minnesota Rules of Civil Procedure. Notice of the pendency of the action and of the proposed settlement was mailed and published.

5. That the Settlement Agreement is fair, reasonable and adequate as to each member of the class.

The settlement provides for substantial changes in the method of accounting mortgage escrow impound accounts to be utilized by the Defendant, and substantially reduces the amount of money required to be maintained in mortgage escrow accounts for a substantial proportion of the Class. In similar cases, involving approximately the same number of loans and exactly the same changes in methodology, these changes have resulted in refunds to the Class of $10 Million to $14 Million. In addition to this Refund, the Class will receive $50,000 representing an imputed interest penalty for use of funds allegedly improperly maintained in escrow impound accounts by Defendant. The Court considers these changes in methodology, refunds, and cash payments to the Class to represent fair, reasonable and adequate compensation to the Class in highly disputed litigation.

6. That the positions asserted by the Defendant have received some support from HUD, and from other Courts that have considered the merits of Plaintiffs' claims. It is anything but certain that Plaintiff would prevail on their substantive claims, or even achieve as good a result as the outcome provided for in the settlement, if the case were litigated to a conclusion.

7. That each member of the class is bound by the terms of the Settlement Agreement, including those regarding the ongoing services of their mortgage escrow accounts, and the release and covenant not to sue provided for in the Settlement Agreement between the parties. The Mortgage contract of each member of the class is amended, as provided for in the Settlement Agreement, to expressly include the provisions for ongoing servicing of the mortgage escrow impound account in the manner provided for in the Settlement Agreement.

8. That the comments of those objecting to the settlement have been considered and are found to be lacking merit and do not justify denying approval of this settlement.

9. That as soon as practicable and commercially reasonable, but in all events within one (1) year of the date

when the Order filed on the 7th day of February, 1996, becomes final as set forth in the Settlement Agreement, Defendant shall institute, or to the extent it has already been instituted, continue to use, the methodology for servicing the escrow accounts of the class members set forth in the Settlement Agreement.

10. That Chemical will facilitate redemption and processing of the credits, as set forth in paragraph 10 of the Settlement Agreement, as soon as practicable after the Effective Date of the Settlement Agreement.

11. That within ten (10) days of the date when the Order filed on the 7th day of February, 1996, becomes final as set forth in Paragraph 20 of the Settlement Agreement, Defendant shall pay to Zimmerman Reed as and for attorneys' fees, costs and expenses not to exceed $250,000 from Defendant. All remaining sums to be paid under the terms of the Settlement Agreement shall then be credited or paid to members of the Class, as provided for in the Settlement Agreement and in paragraph 17 herein.

12. That all claims in the litigation against Defendant are dismissed on the merits and with prejudice. Each member of the class is permanently enjoined from bringing, joining or continuing to prosecute against Defendant or any released person or entity as set forth in the Settlement Agreement any claim that was, could have been or may be brought in this action or otherwise for which a release and covenant not to sue is given in the Settlement Agreement. Any party violating the Court's injunction shall be required to pay the costs and attorneys' fees incurred by any released party as a result of a violation of the Court's injunction.

13. That the Court hereby retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement between the parties.

14. That unclaimed funds from the settlement fund will be paid over to the Habitat for Humanity.

15. That no later than April 1, 1997 and on or before April 1st of each of the following four years through the year 2001, Defendant shall file with the Court, and serve on Plaintiffs' counsel, the following information:

a. the total dollar amount of funds refunded to mortgagors for escrow accounts maintained in the previous calendar year; and

b. the total number of discount certificates redeemed pursuant to Paragraph 10 of the Settlement Agreement during the previous calendar year.

16. That within 120 days after the Effective Date of the Settlement Agreement, or as soon thereafter as practicable, Defendant will file with the Court, and serve upon Plaintiffs' counsel, a list of all checks that have been sent to Former Class members and a confirmation that any remaining funds in the rebate pool have been distributed to the charity specified in Paragraph 11 of the Settlement Agreement. Any filings may, at Defendant's option, be done in magnetic tape or other electronic or computer medium or format.

17. That the Findings and Dismissal Order and the Court's Order Awarding Class Counsel Fees and Costs shall be deemed final, in accordance with paragraph 20(a) of the Settlement Agreement, ninety-five (95) days, rather than sixty-five (65) days, after the entry of judgment thereon to reflect the intent of the parties that sufficient time elapse for the filing of any appeals from the Court's orders and/or judgment, including a reasonable time for filing by mail, before the Settlement Agreement shall be deemed "Effective", as provided in paragraph 23 thereof. The remaining provisions of said paragraph 20 of the Settlement Agreement shall remain in full force and effect.

File #94-9240

18. That there being no just reason for delay, judgment be, and hereby is, entered immediately.

BY THE COURT
DISTRICT COURT ADMINISTRATOR

BY /illegible/
Deputy

STATE OF MINNESOTA DISTRICT COURT

HENNEPIN COUNTY FOURTH JUDICIAL DISTRICT

Andrea T. and Peter J. Nasset;)
Molly K. Olson; Randall C.)
Johnson;)
Kenneth and Nancy French,)
and all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
Margaretten & Company, Inc.,)
Chemical Mortgage Company,)
)
Defendants.)

Case No. 94-9230

AMENDED FINDINGS AND ORDER

This matter came on for hearing before the undersigned on Friday, January 12, 1996 on the motion of Plaintiff for final approval of the class action settlement entered into between the parties to the action. Defendant appeared in support of said motion.

The Plaintiff class was represented by Charles S. Zimmerman and Barry G. Reed of the law firm Zimmerman Reed, 5200 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402. Defendants were represented by Robert J. Pratte and Alan H. Maclin, Briggs and Morgan, 2400 IDS Center, Minneapolis, Minnesota 55402. The issues with respect to the fairness of the proposed settlement and the attorneys' fees and costs sought by Plaintiffs' counsel were briefed and argued. Based upon such briefs and arguments, and upon the other files and records in this matter, the Court finds and orders as follows:

1. The action against Chemical was commenced on or about June 21, 1991. The action against Margaretten was commenced on June 15, 1994. An Amended Complaint is being filed in this action naming Chemical as an additional Defendant following the acquisition of Margaretten by Chemical.

2. This action may, for settlement purposes, be maintained as a class action with the class consisting of two subclasses: (a) all persons with escrowed mortgage loans being serviced or subserviced by Defendant as of January 1, 1995, and (b) all persons who formerly had escrowed mortgage loans that were serviced or subserviced by defendant or its predecessors for a period of at least twelve (12) consecutive months between January 1, 1981 and December 31, 1994 (the "paid off loan class period"), which loans were paid off, transferred or otherwise removed from Defendant's books and records, or whose escrow accounts were waived by Defendant during the paid off loan class period. For those persons who formerly had escrowed mortgage loans secured by real property located in the State of Ohio, the paid off loan class period is January 1, 1976 to December 31, 1994. Included in the existing mortgagor subclass are those loans as of January 1, 1995, by Bank of America for Margaretten & Company, Inc.

3. The Plaintiffs as class representatives, fairly and adequately represent the interests of the class and have no interests antagonistic to the Class.

4. The notice previously given to class members in this action satisfies the requirements of due process and the requirements of Rule 23 Minnesota Rules of Civil Procedure.

Notice of the pendency of the action and of the proposed settlement was mailed and published.

5. The Settlement Agreement is fair, reasonable and adequate as to each member of the class.

The settlement provides for substantial changes in the method of accounting mortgage escrow impound accounts to be utilized by the Defendant, and substantially reduces the amount of money required to be maintained in mortgage escrow accounts for a substantial proportion of the Class. In similar cases, involving approximately the same number of loans and exactly the same changes in methodology, these changes have resulted in refunds to the Class of $10 Million to $14 Million. In addition to this Refund, the Class will receive $50,000 representing an imputed interest penalty for use of funds allegedly improperly maintained in escrow impound accounts by Defendant. The Court considers these changes in methodology, refunds and cash payments to the Class to represent fair, reasonable and adequate compensation to the Class in highly disputed litigation.

6. The positions asserted by the Defendant have received some support from HUD, and from other courts that have considered the merits of Plaintiffs' claims. It is anything but certain that Plaintiff would prevail on their substantive claims, or even achieve as good a result as the outcome provided for in the settlement, if the case were litigated to a conclusion.

7. Each member of the class is bound by the terms of the Settlement Agreement, including those regarding the ongoing servicing of their mortgage escrow accounts, and the release and covenant not to sue provided for in the Settlement Agreement between the parties. The mortgage contract of each member of the class is amended, as provided for in the Settlement Agreement, to expressly include the provisions for

ongoing servicing of the mortgage escrow impound account in the manner provided for in the Settlement Agreement.

8. The comments of those objecting to the settlement have been considered and are found to be lacking merit and do not justify denying approval of this settlement.

9. As soon as practicable and commercially reasonable, but in all events within one (1) year of the date when this Order becomes final as set forth in the Settlement Agreement, Defendant shall institute, or to the extent it has already been instituted, continue to use, the methodology for servicing the escrow accounts of the class members set forth in the Settlement Agreement.

10. Chemical will facilitate redemption and processing of the credits, as set forth in paragraph 10 of the Settlement Agreement, as soon as practicable after the Effective Date of the Settlement Agreement.

11. Within ten (10) days of the date when this Order becomes final as set forth in Paragraph 20 of the Settlement Agreement, Defendant shall pay to Zimmerman Reed as and for attorney's fees, costs and expenses not to exceed $250,000 from Defendant. All remaining sums to be paid under the terms of the Settlement Agreement shall then be credited or paid to members of the Class, as provided for in the Settlement Agreement and in paragraph 17 herein.

12. All claims in the litigation against Defendant are dismissed on the merits and with prejudice. Each member of the class is permanently enjoined from bringing, joining or continuing to prosecute against Defendant or any released person or entity as set forth in the Settlement Agreement any claim that was, could have been or may be brought in this action or otherwise for which a release and covenant not to sue is given in the Settlement Agreement. Any party violating the Courts' injunction shall be required to pay the costs and

attorneys' fees incurred by any released party as a result of a violation of the Court's injunction.

13. The Court hereby retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement between the parties.

14. Unclaimed funds from the settlement fund will be paid over to the Habitat for Humanity.

15. No later than April 1, 1997 and on or before April 1st of each of the following four years through the year 2001, Defendant shall file with the Court, and serve on the Plaintiffs' counsel, the following information:

a. the total dollar amount of funds refunded to mortgagors for escrow accounts maintained in the previous calendar year; and

b. the total number of discount certificates redeemed pursuant to Paragraph 10 of the Settlement Agreement during the previous calendar year.

16. Within 120 days after the Effective Date of the Settlement Agreement, or as soon thereafter as practicable, Defendant will file with the Court, and serve upon Plaintiffs' counsel, a list of all checks that have been sent to Former Class members and a confirmation that any remaining funds in the rebate pool have been distributed to the charity specified in Paragraph 11 of the Settlement Agreement. Any filings may, at Defendant's option, be done in magnetic tape or other electronic or computer medium or format.

17. The Findings and Dismissal Order and the Court's Order Awarding Class Counsel Fees and Costs shall be deemed final, in accordance with paragraph 20(a) of the

Settlement Agreement ninety-five (95) days, rather than sixty-five (65) days, after the entry of judgment thereon to reflect the intent of the parties that sufficient time elapse for the filing of any appeals from the Court's orders and/or judgment, including a reasonable time for filing by mail, before the Settlement Agreement shall be deemed "Effective", as provided in paragraph 23 thereof. The remaining provisions of said paragraph 20 of the Settlement Agreement shall remain in full force and effect.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.

Dated: *February 7, 1996*

/s/ Marilyn J. Justman
Judge Marilyn J. Justman
Hennepin County District
Court Judge

JUDGE MARILYN J. JUSTMAN
FOURTH JUDICIAL DISTRICT COURT
HENNEPIN COUNTY GOVERNMENT CENTER
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292 Madison Avenue
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New York, New York 10017

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